MASTER
NEGATIVE
NO. 94-82205-7

COPYRIGHT STATEMENT

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted materials including foreign works under certain conditions. In addition, the United States extends protection to foreign works by means of various international conventions, bilateral agreements, and proclamations.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is not to be "used for any purpose other than private study, scholarship, or research." If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

The Columbia University Libraries reserve the right to refuse to accept a copying order if, in its judgement, fulfillment of the order would involve violation of the copyright law.

Author:
U.S. Congress. Senate.

Title:
To regulate the products of child labor

Place:
Washington, D.C.

Date:
1937

94-82205-7
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD

BUSINESS
266
Un3

U. S. *Congress. Senate. Committee on interstate commerce.*
To regulate the products of child labor. Hearings before the Committee on interstate commerce, United States Senate, Seventy-fifth Congress, first session, on S. 592, S. 1976, S. 2068, S. 2226, and S. 2345, bills to regulate interstate commerce in the products of child labor, and for other purposes. May 12, 18, 20, 1937 ... Washington, U. S. Govt. print. off., 1937.

iii, 192 p. incl. tables, forms. 23cm.

Running title: Regulate products of child labor.
Printed for the use of Committee on interstate commerce.
Burton K. Wheeler, chairman.

1. Children—Employment—U. S. I. Title.

37-15043

Library of Congress HD6250.U3A4 1937 b
——— Copy 2. [5] 331.30973

RESTRICTIONS ON USE:

TECHNICAL MICROFORM DATA

FILM SIZE: 35mm REDUCTION RATIO: 12X IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 9-20-94 INITIALS: PB

TRACKING # : MSH 02226

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

2.0 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

1.5 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

PM-MGP 13"x18"
METRIC GENERAL PURPOSE TARGET
PHOTOGRAPHIC

200 mm

150 mm

100 mm

A5

A4

1.0 1.1 1.25 1.4 1.6 1.8

1.0 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

1.5 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

2.0 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz 1234567890

2.5 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz 1234567890

PRECISION℠ RESOLUTION TARGETS

Century

A&P

1303 Geneva Avenue
St. Paul, MN 55119

4.5 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz 1234567890

3.5 mm ABCDEFGHIJKLMNOPQRSTUVWXYZ abcdefghijklmnopqrstuvwxyz1234567890

U.S. Congress. Senate.
Committee on Interstate
Commerce.

To Regulate the
Products of Child Labor.

D 266 Un3

Columbia University
in the City of New York

LIBRARY

School of Business

TO REGULATE THE PRODUCTS OF CHILD LABOR

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE
UNITED STATES SENATE

SEVENTY-FIFTH CONGRESS

FIRST SESSION

ON

S. 592, S. 1976, S. 2068, S. 2226 and S. 2345

BILLS TO REGULATE INTERSTATE COMMERCE IN THE PRODUCTS OF CHILD LABOR, AND FOR OTHER PURPOSES

MAY 12, 18, AND 20, 1937

Printed for the use of the Committee on Interstate Commerce

UNITED STATES
GOVERNMENT PRINTING OFFICE
148316 WASHINGTON : 1937

COMMITTEE ON INTERSTATE COMMERCE

BURTON K. WHEELER, Montana, *Chairman*

ELLISON D. SMITH, South Carolina
ROBERT F. WAGNER, New York
ALBEN W. BARKLEY, Kentucky
M. M. NEELY, West Virginia
WILLIAM H. DIETERICH, Illinois
AUGUSTINE LONERGAN, Connecticut
FRED H. BROWN, New Hampshire
HOMER T. BONE, Washington
VIC DONAHEY, Ohio
SHERMAN MINTON, Indiana
A. HARRY MOORE, New Jersey
HARRY S. TRUMAN, Missouri
CHARLES O. ANDREWS, Florida
EDWIN C. JOHNSON, Colorado
H. H. SCHWARTZ, Wyoming

WALLACE H. WHITE, Jr., Maine
JAMES J. DAVIS, Pennsylvania
WARREN R. AUSTIN, Vermont

HENRIK SHIPSTEAD, Minnesota

M. W. MITCHELL, *Clerk*
R. BAILEY STORTZ, *Assistant Clerk*

Business
D266
Un3

CONTENTS

Statements of— Page

Miss Grace Abbott, professor of public welfare administration, University of Chicago, Chicago, Ill. 61
John Brophy, director of the Committee for Industrial Organization 170
Mrs. LaRue Brown (Dorothy Kirchwey Brown), director, National League of Women Voters, 78 Revere Street, Boston, Mass. 115
J. Wallace Bryan, 1302 Mercantile Trust Building, Baltimore, Md.; attorney at law, representing the Bureau of Catholic Charities of Baltimore 161
Henry Root Stern, attorney at law, New York, N. Y. 131
John T. Corbett, assistant grand chief engineer and national legislative representative, Brotherhood of Locomotive Engineers 148
W. D. Johnson, vice president and national legislative representative, Order of Railway Conductors, Labor Building, Washington, D. C. 149
James A. Farquharson, national legislative representative, Brotherhood of Railroad Trainmen, 10 Independence Avenue, Washington, D. C. 149
James A. Emery, general counsel, National Association of Manufacturers, Investment Building, Washington, D. C. 150
William F. Montavon, director, legal department, National Catholic Welfare Conference 165
Alfred P. Thom, Jr., assistant to the general counsel, Association of American Railroads, Washington, D. C. 166
E. L. Oliver, executive vice president of Labor's Nonpartisan League 171
James Emory Brooks, civil engineer, Glen Ridge, N. J. 186
Frieda S. Miller, director of the Division of Women in Industry and Minimum Wage, New York State Department of Labor 129
Edward Keating, editor of Labor, former Member of the House of Representatives from Colorado, Labor Building, Washington, D. C. 8
Dr. Oscar F. Blackwelder, pastor, Lutheran Church of the Reformation, Washington, D. C. 20
Manfred W. Ehrich, attorney at law, New York, N. Y. 25
Lee Merriweather, representing National Committee for the Protection of Child, Family, School, and Church; St. Louis, Mo. 26
Arthur J. Lovell, vice president and national legislative representative, Brotherhood of Locomotive Firemen and Enginemen, 310 Labor Building, Washington, D. C. 32
E. J. Manion, president, Order of Railroad Telegraphers, St. Louis, Mo. 37
Joseph D. Nunan, Jr., member of the Senate of the State of New York 37
Miss Katharine F. Lenroot, Chief, Children's Bureau, Department of Labor, Washington, D. C. 39
Courtney Dinwiddie, general secretary, National Child Labor Committee, 419 Fourth Avenue, New York, N. Y. 81
William H. Davis, representing National Consumers' League 100

TO REGULATE THE PRODUCTS OF CHILD LABOR

WEDNESDAY, MAY 12, 1937

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met, pursuant to call, at 10:30 a. m., in room 412, Senate Office Building, Senator Burton K. Wheeler presiding.

Present: Senators Wheeler (chairman), Barkley, Lonergan, Minton, Andrews, Johnson of Colorado, Schartz, White, and Austin.

The CHAIRMAN. The committee will please come to order. This meeting has been called to hear persons who may wish to appear in regard to the child-labor bills. These bills will be made a part of the record.

(The bills S. 592, S. 1976, S. 2068, S. 2226, S. 2226—amendments, and S. 2345 will be printed in full in the record, as follows:)

[S. 592, 75th Cong., 1st sess.]

A BILL To regulate interstate commerce in goods, wares, and merchandise manufactured, produced, or mined by persons under years of age, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all goods, wares, and merchandise manufactured, produced, or mined, wholly or in part, by persons under years of age, transported into any State or Territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in such State or Territory be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

SEC. 2. That it shall be unlawful for any person knowingly to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting any goods, wares, and merchandise manufactured, produced, or mined wholly or in part by persons under years of age from one State, Territory, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof into any State, Territory, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, where said goods, wares, and merchandise are intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof.

SEC. 3. All packages containing any goods, wares, and merchandise manufactured, produced, or mined wholly or in part by persons under years of age, when shipped or transported in interstate commerce, shall be plainly and clearly marked, so that the name and address of the shipper, the name and address of the consignee, the nature of the contents, and the name and location of the plant, factory, or other establishment where produced wholly or in part may be readily ascertained on an inspection of the outside of such package.

SEC. 4. Any person violating any provision of this Act shall for each offense, upon conviction thereof, be punished by a fine of not more than $1,000, and such goods, wares, and merchandise shall be forfeited to the United States, and

may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law.

SEC. 5. Any violation of this Act shall be prosecuted in any court having jurisdiction of crime within the district or territory in which said violation was committed, or from or into which any such goods, wares, or merchandise may have been carried or transported contrary to the provisions of this Act.

[S. 1976, 75th Cong., 1st sess.]

A BILL To regulate interstate transportation of products of child labor in certain cases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all goods, wares, and merchandise manufactured, produced, or mined on or after January 1, 1938, wholly or in part through the use of child labor, transported into any State or Territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in such State or Territory be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

SEC. 2. It shall be unlawful for any person knowingly to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting any goods, wares, and merchandise manufactured, produced, or mined on or after January 1, 1938, wholly or in part through the use of child labor, from one State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, or from any foreign country, into any State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof, where said goods, wares, and merchandise are intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, Puerto Rico, Virgin Islands, or District of the United States, or place noncontiguous but subject to the jurisdiction thereof.

SEC. 3. The outside of all packages containing any goods, wares, and merchandise manufactured, produced, or mined on or after January 1, 1938, wholly or in part through the use of child labor, when shipped or transported in interstate or foreign commerce shall bear a conspicuous label truthfully setting forth—

(1) The name and address of the shipper;

(2) The name and address of the consignee;

(3) The nature of the contents; and

(4) A classification according to years of age of children of each sex through the use of whose labor the contents have been manufactured, produced, or mined, which classification shall indicate (a) the type or types of work performed by each class; (b) the minimum number of years of a regular course of study in a public, private, or parochial school completed by members of each class not certified by qualified public officials to be incapable of profiting from further attendance at school; (c) the maximum number of hours of labor per day and per week and the maximum number of days of labor per week devoted to employment by members of each class not attending public, private, or parochial school when such schools are in session; and (d) similar information as to hours and days of labor devoted to employment by members of each class attending public, private, or parochial schools during periods when such schools are in session and during vacation periods.

None of the contents of any package bearing a label complying with the requirements of this section shall be removed from said package and repacked and shipped or transported in interstate or foreign commerce, whether or not said contents shall have been processed or fabricated, unless the classification set forth in the label on the package from which said contents were removed shall be set forth in its entirety in the label on the package in which said contents are repacked.

SEC. 4. For the purposes of this Act the term "child labor" shall be defined as employment of a minor under the age of sixteen years, and the term "children" shall be defined as minors under the age of sixteen years. The phrase "manufactured, produced, or mined" as used in this Act shall not be construed to mean planting, cultivation, and harvesting of fruits, grains, vegetables, and other agricultural products.

SEC. 5. Any person violating any provision of this Act shall for each offense, upon conviction thereof, be punished by a fine of not more than $1,000, and such goods, wares, and merchandise shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law: *Provided, however,* That no person who in conformity to Section 3 of this Act and in good faith sets forth in a label on a package in which goods, wares, and merchandise are repacked a classification set forth in a label on a package from which such goods, wares, and merchandise were removed shall be deemed thereby to have violated this Act so as to render himself subject to conviction or the repacked goods, wares, and merchandise subject to forfeiture in the event any of the information contained in such classification proves to be false.

SEC. 6. Any violation of this Act shall be prosecuted in any court having jurisdiction of crime within the district in which said violation was committed, or from or into which any such goods, wares, or merchandise may have been carried or transported, or in any Territory, Puerto Rico, Virgin Islands, or the District of Columbia, contrary to the provisions of this Act.

[S. 2068, 75th Cong., 1st sess.]

A BILL To prevent interstate commerce in the products of child labor, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work.

SEC. 2. That the Attorney General, the Secretary of Commerce, and the Secretary of Labor shall constitute a board to make and publish from time to time uniform rules and regulations for carrying out the provisions of this Act.

SEC. 3. That for the purpose of securing proper enforcement of this Act the Secretary of Labor, or any person duly authorized by the Secretary of Labor, shall have authority to enter and inspect at any time mines, quarries, mills, canneries, workshops, factories, manufacturing establishments, and other places in which goods are produced or held for interstate commerce; and the Secretary of Labor shall have authority to employ such assistance for the purposes of this Act as may from time to time be authorized by appropriation or other law.

SEC. 4. That it shall be the duty of each district attorney to whom the Secretary of Labor shall report any violation of this Act, or to whom any State factory or mining or quarry inspector, commissioner of labor, State medical inspector, or school-attendance officer, or any other person shall present satisfactory evidence of any such violation to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided.

SEC. 5. That any person who violates any of the provisions of section 1 of this Act, or who refuses or obstructs entry or inspection authorized by section 3 of this Act, shall, for each offense prior to the first conviction of such person under the provisions of this Act, be punished by a fine of not more than $200, and shall for each offense subsequent to such conviction be punished by a fine of not more than $1,000, nor less than $100, or by imprisonment for not more than three months, or by both such fine and imprisonment, in the discretion of the court.

SEC. 6. That the word "person" as used in this Act shall be construed to include any individual or corporation or the members of any partnership or other unincorporated association. The term "ship or deliver for shipment in

interstate or foreign commerce" as used in this Act means to transport or to ship or deliver for shipment from any State or Territory or the District of Columbia to or through any other State or Territory or the District of Columbia or to any foreign country; and in the case of a dealer means only to transport or to ship or deliver for shipment from the State, Territory, or district of manufacture or production.

[S. 2226, 75th Cong., 1st sess.]

A BILL To regulate interstate commerce in the products of child labor, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That all goods, wares, and merchandise manufactured, produced, or mined on or after January 1, 1938, wholly or in part through the use of child labor, transported into any State or Territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in such State or Territory be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory, and shall not be exempt therefrom by reason of being introduced in the original package or otherwise.

SEC. 2. It shall be unlawful for any person knowingly to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting any goods, wares, or merchandise manufactured, produced, or mined on or after January 1, 1938, wholly or in part through the use of child labor, from one State or Territory into any State or Territory, where said goods, wares, or merchandise are intended by any person interested therein to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State or Territory.

SEC. 3. It shall be unlawful for any person knowingly to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting in interstate commerce any goods, wares, or merchandise manufactured, produced, or mined on or after January 1, 1938, wholly or in part through the use of child labor, unless the outside of such goods, wares, or merchandise, or the package containing the same if they be packaged, shall bear a conspicuous label conforming to the requirements of this section. Such label shall truthfully set forth—

(1) The name and address of the shipper;

(2) The name and address of the consignee;

(3) The nature of such goods, wares, or merchandise; and

(4) A summary statement of the kind or kinds of work performed by children in the manufacture, production, or mining of such goods, wares, or merchandise and the type or types of places where such work was performed.

In case a label conforming to the requirements of this section has been removed from goods, wares, or merchandise, or from a package containing the same, or such goods, wares, or merchandise have been removed from a package bearing such a label, prior to the time such goods, wares, or merchandise shall be offered for shipment in interstate commerce, the information set forth in such label pursuant to the requirements of clause (4) of the preceding sentence or of this sentence shall be incorporated in a new label affixed to such goods, wares, or merchandise so offered for shipment, or to the package containing the same if they be packaged, together with a statement that such information was taken from another label. The incorporation of such information and statement in the new label shall constitute compliance with the requirements of said clause (4) unless child labor shall have been used in connection with processing or fabricating such goods, wares, or merchandise after removal of the label therefrom or from the package containing the same or after removal thereof from the package bearing such label, as aforesaid, in which event the incorporation of said information and said statement shall be a requirement as to said new label in addition to those defined by said clause (4).

SEC. 4. It shall be unlawful for any person who has manufactured, produced, or mined goods, wares, or merchandise in any State or Territory, wholly or in part through the use of child labor, on or after January 1, 1938, knowingly to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting such goods, wares, or merchandise in interstate or foreign commerce.

SEC. 5. For the purposes of this Act the term "child labor" shall be defined as employment of a human being under the age of sixteen years; the term "children" shall be defined as human beings under the age of sixteen years; the term "package" shall be defined as a wrapping, container, or crate and as a unit of rolling stock in which goods, wares, or merchandise may be shipped or transported in bulk; the term "person" shall be defined as an individual, a corporation, a partnership, an association, a joint-stock company, or any unincorporated organization; and the phrase "State or Territory" shall be defined to include the organized States and Territories of the United States, any district or possession thereof, or place noncontiguous but subject to the jurisdiction thereof. The phrase "manufactured, produced, or mined" as used in this Act shall not be construed to mean planting, cultivation, and harvesting of fruits, grains, vegetables, and other agricultural products or agricultural work in connection with dairying, livestock husbandry, and poultry husbandry.

SEC. 6. Any person violating any provision of this Act shall for each offense, upon conviction thereof, be punished by a fine of not more than $1,000, and such goods, wares, or merchandise shall be forfeited to the United States and may be seized and condemned by like proceedings as those provided by law for the seizure and forfeiture of property imported into the United States contrary to law: *Provided, however*, That no person who in conformity to section 3 of this Act and in good faith sets forth in a label information stated to have been taken from another label shall be deemed thereby to have violated this Act so as to render himself subject to conviction, or goods, wares, or merchandise bearing or contained in a package bearing such label subject to forfeiture, in the event any of the information so stated to have been taken from another label proves to be false. In any proceeding arising out of an alleged violation of this Act, a showing that the goods, wares, or merchandise with respect to which the violation is alleged to have occurred were manufactured, produced, or mined wholly or in part by a person who used child labor at one or more stages or to perform one or more operations in the manufacture, production, or mining of goods, wares, or merchandise of similar character subsequent to January 1, 1938, and within six months of the date of the alleged violation, shall be prima-facie evidence that the goods, wares, or merchandise with respect to which said violation is alleged to have occurred were manufactured, produced, or mined wholly or in part through the use of child labor. In any such proceeding a copy of, extract from, or statement summarizing a record kept by, or document filed with, a government, church, or school authority establishing, or purporting to establish, the age or date of birth of a human being whose labor is alleged to have been used in the manufacture of goods, wares, or merchandise shall be admissible in evidence when certified by or on behalf of such authority without further identification or authentication as prima-facie evidence of the age of such human being. The adduction of such prima-facie evidence shall cast upon the defendant or the party objecting to the forfeiture of goods, wares, or merchandise, as the case may be, the burden of rebutting or repelling such prima-facie evidence by affirmative proof to the contrary. All records, returns, applications, and other information filed with or kept by any public office, officers, or authority pursuant to the Act of August 14, 1935 (ch. 531, 49 Stat. 620), or any rule or regulation promulgated pursuant thereto, shall be available for inspection by any public official authorized or qualified to enforce this Act or to prosecute a violation thereof, and such public official may require that copies of, extracts from, or statements summarizing any of such records, returns, applications, or other information be certified and delivered to him by or on behalf of any public office, officers, or authority by whom the same are kept or with whom they be filed.

SEC. 7. Any violation of this Act shall be prosecuted in any court having jurisdiction of crime within the district in which said violation was committed, or from or into which any such goods, wares, or merchandise may have been carried or transported, or in any State or Territory, contrary to the provisions of this Act.

SEC. 8. The Secretary of Labor shall be charged with the enforcement of this Act and shall be vested with full authority to administer its provisions and to prescribe such rules and regulations as may be necessary for its enforcement.

SEC. 9. Sections 1, 2, and 4 of this Act are each intended to prescribe separate and distinct bases of regulation and the invalidity of any provision of any of said sections or the application of such provision to any person or circumstances is not intended to affect the remainder of the Act and the application of such provision to other persons or circumstances.

[S. 2226, 75th Cong., 1st sess.]

AMENDMENTS Intended to be proposed by Mr. Johnson of Colorado to the bill (S. 2226) to regulate interstate commerce in the products of child labor, and for other purposes, viz:

On page 4, lines 12 and 13, strike out the word "knowingly".

On page 4, after line 16, insert the following:

"SEC. 5. That after January 1, 1938, no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom child labor has been employed or permitted to work."

On page 4, line 17, strike out "SEC. 5" and insert "SEC. 6".

On page 5, line 11, strike out "SEC. 6" and insert "SEC. 7".

On page 7, line 14, strike out "SEC. 7" and insert "SEC. 8".

On page 7, line 20, strike out "SEC. 8" and insert "SEC. 9".

On page 8, line 1, strike out "SEC. 9" and insert "SEC. 10".

On page 8, line 1, after the numeral "2", strike out the word "and".

On page 8, line 1, after the numeral "4" insert a comma and the following: "and 5".

[S. 2345, 75th Cong., 1st sess.]

A BILL To regulate commerce with foreign nations and among the several States in the products of child labor

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article produced in a factory situated in the United States, in or about which within sixty days prior to the removal of such article therefrom any minor under the age of sixteen years has been employed: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any article under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such article before the beginning of said prosecution.

(b) The provisions of this Act with respect to articles within the preceding subsection, shall also apply with respect to such articles as are produced in any mine, foundry, sawmill, planing mill, or establishment manufacturing explosives, situated in the United States, in which within sixty days prior to the removal of such articles therefrom any minor under the age of eighteen years has been employed.

SEC. 2. (a) The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

(b) The Chief of the Children's Bureau or any persons designated by him, pursuant to the regulations issued under the preceding subsection, shall have authority to enter and inspect at any time factories or other places in which articles are produced or held for interstate commerce and to inspect records relating to the employment of minors or to the shipment of articles therefrom, and to make periodic reports of such inspections.

(c) The Secretary of Labor, with the consent of the state agencies charged with the administration of state laws relating to the employment of minors, may utilize such state and local officers concerned with the administration of these laws as he may find necessary from time to time for the administration of this Act.

(d) Whenever the Secretary of Labor shall report any violation of this Act to the Attorney General and furnish him with substantial evidence in support thereof, the Attorney General shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided.

SEC. 3. That any person who violates any of the provisions of section 1 of this Act, or who refuses or obstructs entry or inspection authorized by section 2 of this Act, shall for each offense prior to the first conviction of such person under the provisions of this Act, be punished by a fine of not more than $200, and shall for each offense subsequent to such conviction be punished by a fine of not more than $1,000, nor less than $100, or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court: *Provided*, That no dealer shall be prosecuted under the provisions of this Act for a shipment or delivery for shipment who has secured a representation in writing from the person by whom the goods shipped or delivered for shipment were produced, resident in the United States, to the effect that such articles were not produced in a place the shipment of which therefrom is prohibited under section 1; and in such event, if such representation contains any false statement of a material fact, the person furnishing the same shall be amenable to prosecution and to the fine or imprisonment provided by this section for violation of the provisions of this Act. Said representation, to afford the portection above provided, shall contain the name and address of the person furnishing the same: *And provided further*, That there shall be no prosecution under this Act for the shipment or delivery for shipment of articles produced in a place the shipment of which therefrom is prohibited by reason of the employment of a minor under the age of eighteen, if such employment has been that of a minor as to whom the producer or manufacturer has on file prior to such shipment or delivery an age certificate, issued pursuant to the regulations authorized herein, indicating that the minor is of such an age that such shipment or delivery was not prohibited by this Act. Any person who knowingly makes a false statement or presents false evidence in or in relation to any such certificate or application therefor shall be amenable to prosecution and to the fine or imprisonment provided by this section for violations of this Act. In any state designated by the regulations an employment or age certificate issued by an official authorized to issue such certificates under the laws of that state and not inconsistent with the provisions of this Act shall have the same force and effect as a certificate herein provided for.

SEC. 4. Whenever used in this Act—

(a) The words "United States" shall mean the States, Alaska, Hawaii, and the District of Columbia;

(b) The word "person" shall include one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;

(c) The words "ship or deliver for shipment in interstate and foreign commerce", as used in this Act, means to transport or to ship or deliver for shipment from any state or territory or the District of Columbia to or through any other state or terriory or the District of Columbia or to any foreign country; and in the case of a dealer means only to transport or to ship or deliver for shipment from the state, territory, or district of manufacture or production;

(d) The word "factory" shall include any mine, mill, foundry, cannery, workshop, or manufacturing establishment;

(e) The word "producer" shall include manufactured, assembled, fabricated, processed, packed, or otherwise prepared for shipment;

(f) The word "article" shall include commodities, supplies, materials, and equipment;

(g) The word "employed" shall include suffered or permitted to work.

SEC. 5. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 6. This Act shall become effective on and after one hundred eighty days from its approval.

SEC. 7. This Act may be cited as the "Federal Child Labor Act of 1937."

The CHAIRMAN. I do not know how many people are present who wish to speak in regard to this proposed legislation, but if there are people who want to appear, they will give their names to the clerk of the committee and we will try to give them an opportunity to be heard.

I will first call Mr. Keating.

STATEMENT OF EDWARD KEATING, EDITOR OF LABOR, FORMER MEMBER OF THE HOUSE OF REPRESENTATIVES FROM COLORADO, WASHINGTON, D. C.

The CHAIRMAN. Give your name to the committee reporter.

Mr. KEATING. Edward Keating.

The CHAIRMAN. You are the editor of a newspaper called Labor, are you?

Mr. KEATING. Yes, sir. I am a resident of Colorado, temporarily located in Washington.

The CHAIRMAN. Mr. Keating, you were formerly a Congressman from the State of Colorado, were you not?

Mr. KEATING. Yes.

The CHAIRMAN. Now, when you were a Congressman you introduced what was known as the Keating Child Labor Act, did you not?

Mr. KEATING. Well, Mr. Chairman, it was known as the Owen-Keating Child Labor Act. The bill was drafted by the National Child Labor Committee, and I think the Child Labor Committee should be commended for the splendid work it did on behalf of that legislation. The bill was introduced into the Senate by Senator Robert L. Owen, of Oklahoma, and I sponsored it in the House.

Senator MINTON. What year was that?

Mr. KEATING. That was in 1914. Mr. Chairman, before I proceed with my general remarks I should like to make two statements, if I may.

The CHAIRMAN. Go ahead.

Mr. KEATING. It is true, as the chairman has suggested, that I am the editor of Labor, the official Washington weekly newspaper of the standard labor organizations. But in appearing here this morning I do not appear on behalf of the standard railroad labor organizations. I have nothing to do with legislation. The views of the standard railroad labor organizations on the pending legislation will be presented by their very able national legislative representatives.

And then, second, I should like to say that I hope my appearance here will not be interpreted as in any way modifying my attitude toward the old child-labor amendment of the Federal Constitution. Whatever the fate of this proposed legislation may be, I am convinced that the child-labor problem cannot be adequately handled by the States. I believe it is necessary to have Federal action and, therefore, that it is necessary to make the child-labor amendment a part of the Federal Constitution, in order that the Federal Government may set up certain minimum standards which all States will have to observe.

The child-labor amendment has been ratified by 28 States. Eight more States are necessary in order to make it a part of the Constitution. I think it is obvious that those eight States cannot be secured until after the next general election, and therefore in my judgment it is desirable——

Senator BARKLEY (interposing). You mean by "next general election" the next general State elections?

Mr. KEATING. Yes; when members of State legislatures and Members of Congress will be elected. Therefore in my judgment it is desirable that Congress should now proceed to enact such legislation as it may enact under the Constitution, to safeguard children. That is why I hope this committee will report out a bill with sufficient teeth in it to protect the children of America.

Now, getting back to the original child-labor legislation: As I have said, it was introduced in the Senate by Senator Owen of Oklahoma, and in the House by myself. It passed the House after a prolonged struggle, by an overwhelming majority. It was opposed by the National Association of Manufacturers, and by the southern textile interests. In the Senate it was blocked for a number of months.

Perhaps I should say, Mr. Chairman and gentlemen of the committee, before I go to the Senate end of it, that in the House at that time——

The CHAIRMAN (interposing). Be careful how you treat the Senate.

Mr. KEATING. Well, I am always anxious——

Senator WHITE (interposing). It is always proper for House Members to talk about the Senate. [Laughter.]

Senator BARKLEY. I hope Mr. Keating will not be interrupted in expressing freely whatever he may have to say about the Senate.

Mr. KEATING. If I were to stop long enough to express my sentiments as to the Senate of the United States, they would be complimentary, because I consider the Senate of the United States not only the greatest legislative body in the world, but the most progressive legislative body in the world.

What I was about to say, Mr. Chairman, was this: That in the struggle in the House there were at least two members of this committee—my friend here, Senator Barkley, and Senator Neely of West Virginia; and I am not sure whether Senator White was in the House of Representatives at that time or not.

Senator WHITE. Not in 1914.

Mr. KEATING. He came into the House soon after that time, I believe.

Senator WHITE. I became a Member of the House in 1916.

Mr. KEATING. And if the Senator had been in the House at that time I have no doubt in the world he would have voted for the bill. I can recall the speech Senator Barkley made, and I recall his use of the words, in answer to those who urged that the bill was unconstitutional, but it reminded him of what Mme. Roland had said during the French Revolution: "Liberty, O Liberty, what crimes are committed in thy name!"

Senator BARKLEY. And I had four members of the Supreme Court with me.

Mr. KEATING. Well, Mr. Chairman, the bill passed the House, as I say, by an overwhelming majority. It went to the Senate, and was hung up there for several months. Senator Owen was so absorbed in other legislation that it was necessary for Senator Joseph T. Robinson, now the Democratic floor leader and then a young Senator from Arkansas, to take charge of the bill. I think Senator Robinson was then a member of this committee. He made arguments before this committee and on the floor of the Senate in favor of the bill; and in my opinion he has never received any credit for the work he did on that occasion, and yet Senator Robinson, more than

any other individual, secured the passage of the bill through the Senate.

It became necessary, however, for President Woodrow Wilson himself to make a personal appeal on behalf of the bill. The Democratic caucus had decided to put the bill over until after the presidential election of 1916. President Wilson intervened. He came to the Capitol and made a dramatic appeal to the Democratic Members of the Senate to pass the bill. And a bill was passed, sent to the President, and he signed it as I recall September 1, 1916. I witnessed that ceremony, and after the President had signed the bill he gave one of the pens to William B. Wilson, then Secretary of Labor, a veteran trade-unionist. And I recall that there were tears in the old Scotchman's eyes as the Secretary of Labor said to the President:

> Mr. President, this is one of the happiest days of my life. For 20 years I have been urging the enactment of a Federal child-labor law, and now I have lived to see the battle won.

And we all thought the battle was won. But it was not. We were mistaken. The constitutionality of the law was attacked, and by a vote of 5 to 4 the Supreme Court of the United States held it unconstitutional.

Later an attempt was made to meet the decision of the Court by using the taxing provisions of the Constitution. That law, also, was declared unconstitutional.

Then it became necessary to secure an amendment to the Constitution, and a child-labor amendment was submitted to the States for ratification. Everyone thought, at least those of us who supported the amendment, that ratification would be a comparatively simple matter. But the textile interests, and I presume it is fair to say the National Association of Manufacturers, launched a peculiarly vicious propaganda campaign.

The textile interests, through a gentleman named David Clark, who was the editor of the Southern Textile Bulletin, organized what was known as a farmers' organization. It was a paper organization, a fake in fact. Half a dozen farmers in North Carolina were induced by Mr. Clark to permit the use of their names. Mr. Clark wrote all the literature, paid all the expenses of the organization. This was thoroughly developed in the course of an investigation. The legislatures of the States were flooded with absurd stories to the effect that if the amendment were ratified it would be impossible for Willie to fetch in the coal, or for Mary to wipe the dishes for her mother. And, strange as it may seem, that propaganda was so effective that the ratification of the child-labor amendment was held up.

In my own State of Colorado, where the people I might say, Mr. Chairman, are unusually intelligent, ratification was not secured I think for 10 years after the amendment was submitted, and then only through the efforts of such gentlemen as our friend Senator Johnson, who at that time, I think, was Lieutenant Governor of Colorado. Anyhow, I know he assisted in securing the ratification of the amendment by Colorado.

And so, to get down to the present day. The amendment is held up. Twenty-eight States have ratified it. Eight more are necessary.

Pending before this committee are a number of bills. The first bill was introduced by Senator Wheeler, chairman of this committee, on March 24, 1937. That bill, broadly speaking, places the products of child labor in the same category as products of convict labor, and provides that any State which has a law forbidding the sale of such products shall not be invaded by child-labor products from other States.

Senator MINTON. In a measure, the worth of that legislation depends upon State statutes.

Mr. KEATING. Refers to State statutes. New York has passed a statute, and I have not had an opportunity to examine it, but I understand it is a broad measure.

Senator BARKLEY. It has not been signed as yet.

Mr. KEATING. I am not sure as to that. I only know what I read in the newspapers.

The CHAIRMAN. Every State, however, has a child-labor law, some not as broad as others, but I think practically every State has a child-labor law.

Mr. KEATING. The New York statute is designed to complement this bill as I understand it.

Senator BARKLEY. Well, Mr. Chairman, nearly every State has a law which limits the employment of children under certain ages, but, as I understand the situation, there are only two or three States that have a law forbidding the sale of products of child labor.

Mr. KEATING. I must confess that I am not familiar with the State statutes.

Senator BARKLEY. Any State having a law limiting the employment of children to certain ages, unless they also have a statute forbidding the sale of products of such labor, the theory of the prison-made goods idea would not be effective.

The CHAIRMAN. I think that is wrong, because under S. 2226 when goods go into a State they would be controlled to exactly the same extent as though manufactured in that State.

Senator BARKLEY. You mean under the pending bill?

The CHAIRMAN. Yes.

Senator BARKLEY. That would be true, but what I am speaking of is this: Many States have laws limiting child labor, but they do not at the same time limit the sale and distribution of products of child labor. They may punish a violator of the law by the imposition of a fine or something of that kind, but goods made in violation of their law are still free to be distributed and sold.

Mr. KEATING. Mr. Chairman, I am only a poor newspaperman, but think I have sense enough not to become involved in a legal argument between two such distinguished members of the bar as the chairman of this committee and Senator Barkley, of Kentucky.

Senator BARKLEY. Well, we both admit we are distinguished members of the bar, don't we, Mr. Chairman?

The CHAIRMAN. I suppose so. [Laughter.]

Mr. KEATING. Senator Wheeler introduced his bill March 24, 1937. That was followed by a bill by Senator Johnson of Colorado, introduced March 29, 1937. Senator Johnson's bill carried the same principle as the Federal child-labor bill declared unconstitutional by the Supreme Court. But Senator Johnson amended the bill, and I think amended it in a desirable way. The original child-labor bill set up

four standards: We fixed 14 years as the minimum in factories, canneries, and such places; 16 years in hazardous occupations; and then we had provisions about work, the 40-hour week, or perhaps it was the 48-hour week, which shows how archaic such legislation was in view of recent developments. It also had a provision concerning night work.

Senator Johnson wiped out all four provisions, and substituted a flat minimum of 16 years of age for industry, that no child could be employed if under 16 years of age. I think that simplifies and strengthens the proposed legislation.

Then Senator Wheeler and Senator Johnson got together. They introduced, on April 19, 1937, a composite bill, being an amalgamation of both measures, as I understand it. The Johnson-Wheeler bill, or the Wheeler-Johnson bill, however it may be termed, if sustained by the Supreme Court of the United States, will make it possible for Congress to set up certain minimum standards affecting child labor. The States, if they see fit—and I am again on these standards—if they should see fit to enact State legislation, would be protected by the Wheeler-Johnson bill, always provided the State statutes were properly drawn.

I cannot see—and, again, I point out to the committee that I am not a lawyer, so my views, perhaps, are of no great value from the legal standpoint—but I cannot see why the passage of both measures, properly amended and strengthened as to their administrative features, would not be effective. Because, as I see it, if the Supreme Court sustained the child labor bill, there you would have the Federal power, and if some State wanted to go beyond those minimum standards the Federal Government would step in and protect the State.

The CHAIRMAN. Let me say to you, Mr. Keating, that my own view about the matter was this: I felt that both the prohibition of child labor, along the lines of your original bill, or the one introduced by Senator Johnson, and the provisions along the lines of convict labor, should be put into a single measure. That was with the thought that if the Supreme Court should follow its former decision and hold that the prohibition against child labor goods being manufactured in one State and shipped into another State, was unconstitutional, the Court would on the other hand have to hold, following their decision on convict labor-made goods, that the portion of the bill employing the Ashurst-Sumner principle was constitutional. There is the possibility, of course, that they might hold both of them to be constitutional. But certainly it seemed to me that if we are going to pass legislation we ought to incorporate in it the principles of both bills, so that if one falls we are bound to get the other. The Supreme Court might feel that if we passed a bill similar to the old bill, while they might reverse themselves the chances are they would probably not do so.

Senator WHITE. Mr. Chairman, if I might interrupt, may I ask if you are going to continue the hearing this afternoon?

Senator BARKLEY. I hope not, Mr. Chairman; I am very much interested in the deficiency bill.

Senator WHITE. And I have an appointment at 11 o'clock that I must fill.

The CHAIRMAN. I hope that we may go on with the hearing for a while, probably until 1 o'clock.

Senator WHITE. I very much regret that I have to miss Mr. Keating's statement.

Mr. KEATING. I thank you.

The CHAIRMAN. We will go on as long as we can today.

Mr. KEATING. Those of us who favor the child-labor amendment, and who favored the original Child Labor Act, do hope that the Supreme Court will reverse itself, as it did in the minimum-wage case.

The CHAIRMAN. Let me say that that is my hope, that they will reverse themselves. But in the event they should not reverse themselves, under the Wheeler-Johnson bill we would have the other provision, which in my judgment could, for all practical purposes, be made absolutely effective. I may be wrong about that, but I think not.

Senator MINTON. I do not think we need place much hope on a reversal of the child labor opinion, not after we read the opinion in the prison-made goods case, for the reason that the Chief Justice pointed out a difference. As you will recall, in the *Dagenhart case* he pointed out that the child labor law was unconstitutional because an attempt by Congress to regulate business for a State. He points that out in the prison-made goods case. I do not think there is much use of our looking for a reversal of form on the part of the Court, especially when the Chief Justice threw that anchor to the windward.

Senator BARKLEY. But since that decision they have gone some distance along the line of recognizing the stream of commerce.

Senator MINTON. They have done that ever since the stockyards case.

The CHAIRMAN. In view of the decision in the prison-made goods case, and in view of other decisions, it is my feeling that there is not very much hope of the Supreme Court reversing itself in this matter. That is the reason I introduced the bill I did. Consequently, when Senator Johnson introduced his bill, I suggested to him the advisability of putting both ideas into a bill. That was with the view, that if the Supreme Court held one unconstitutional, it would hold the other constitutional. Perhaps in that way we would not be getting all that any of us would desire, but you would at least get something under which, if properly administered, you could prevent for all practical purposes much child labor in this country.

Mr. KEATING. Mr. Chairman, so far as the constitutionality of the original act is concerned, I think the attitude of the Supreme Court will depend entirely upon the gentlemen who may compose the Court at the time. The minority opinion in the child-labor case, written by Mr. Justice Oliver Wendell Holmes, is to my mind a strong defense of the constitutionality of the law. But no one can say what the Supreme Court will do. I think the Chief Justice was exactly right when, as Governor of New York, he said:

> We live under a Constitution but the Constitution is what the judges make it.

That is absolutely correct. No man can forecast at this time what the Supreme Court would do with reference to this proposed legislation.

As a matter of fact, the Supreme Court would have sustained the first Child Labor Act if it had not been for the fact that Woodrow Wilson regarded Franklin K. Lane as such a valuable man he wanted to keep him in his Cabinet. When a vacancy occurred on the Supreme Bench some Members of Congress urged the appoint of Mr. Lane, but instead the President appointed Mr. McReynolds.

The CHAIRMAN. And he appointed Mr. McReynolds, I assume, because he thought he would be liberal; at least he was looked upon at the time as a liberal.

Senator MINTON. I take it the President did not want him to get out of the Cabinet.

Senator BARKLEY. Probably he wanted to keep Mr. Lane in and did not want to keep the other one in.

The CHAIRMAN. You might say, perhaps, that he did not want to kick him upstairs.

Mr. KEATING. Woodrow Wilson had a choice between McReynolds and Lane, and if he had appointed Lane to the bench Lane would have voted this law constitutional. I know that because Secretary of the Interior Lane acted as a sort of counsel for me when I was handling that bill. I knew him very well, and he knew that I knew nothing about the legal phases, and so he repeatedly advised me as to that bill, and insisted it was clearly constitutional. So it is that I say, the appointment of Franklin K. Lane to the Supreme Bench at that time would have meant, in my judgment, not only a decision in favor of the child-labor amendment, but a decision in favor of the minimum-wage law. And we would have had a whole line of decisions toward this end.

I will say that I have had a rather unfortunate experience with the Supreme Court of the United States. I also sponsored a minimum-wage law which was declared unconstitutional. Therefore I have been knocked down by 5-to-4 decisions on two occasions. That is, perhaps, why I show some asperity when I speak of the Supreme Court.

Senator BARKLEY. Let me ask you this question: It may be somewhat legal but it is a question we have to consider here. Let us assume that Congress passes a combination bill, one section of which would prohibit the shipment of all child-made goods in interstate commerce; the other section of which would only prevent the shipment of child-made goods in States where the distribution and sale of child-made goods is distributed. And let us assume that the Supreme Court held both of them constitutional, which one would be paramount in any given State? And let us further suppose that we in our standard fixed 16 years as the age for the permissive shipment of goods manufactured by child labor, and some State undertook to prohibit the distribution and sale of goods manufactured by children under 14 years of age, but legalized the products of children between 14 and 16, which provision of such an act would control?

Mr. KEATING. I think the law should endeavor, at least insofar as you gentlemen may frame the law, to have the Federal act control. I do not know that you can draft it in that way, but that would be my notion.

The CHAIRMAN. I am sure Senator Barkley has not given consideration to it, if he thinks either would be paramount. If you pass a law in which you say that the shipment of goods from one State to another is illegal regardless of the State laws, and you pass another section of the same law in which you say that goods shall be shipped only under certain conditions, neither one of them will be paramount, but both of them will be effective, and the one that prevents the shipment of interstate goods into a State, of course, will prevent the shipment of interstate goods into that State. I do not think that any lawyer who gives any consideration to the matter can come to any other conclusion.

Senator BARKLEY. Do I understand you to mean that if you pass a combination bill—and I have no pride of authorship at all——

The CHAIRMAN. Neither have I.

Senator BARKLEY. If we are going to pass a law, I want it to be the best law we can get, and I want to say, in this connection, that I am not convinced, as a matter of technic, that it is wise to pass any law just now. I am not so certain but what any law passed on the subject might lull the people into the belief that we had done something effective, and thereby retard the effort to get the additional eight States required to ratify the amendment. I think the ratification of the child-labor amendment is infinitely more important than the passage of any law we can enact at this session of Congress.

Mr. KEATING. I agree with you 100 percent.

Senator BARKLEY. I say that in spite of the fact that I have introduced a bill on the subject. I would oppose my own bill if I felt that its enactment into law would lull the American people into a feeling of security, that we had done something that made unnecessary the ratification of the child-labor amendment.

That is where I stand on the whole subject. I would rather wait 2 or 3 years to get the child-labor amendment ratified than to pass the best law we can pass here dealing with interstate commerce that might result in the ultimate defeat of the child-labor amendment. I want to make that statement because that is my settled conviction on the subject.

The CHAIRMAN. Assuming, for the sake of argument, that you can pass a law that would prohibit child-labor goods being shipped from one State to another, and it was held constitutional by the Supreme Court, that certainly would not eliminate the necessity of having the amendment.

Senator BARKLEY. I agree with you. I think all we can do is to prohibit the shipment in interstate commerce of child-made goods, but that does not deal with the large quantities of goods that may be made in the States, over which we could have no jurisdiction without the amendment. If all we want to do is to prevent the shipment in interstate commerce of child-made goods, that is one thing; but the amendment which we have submitted to the American people goes much further than that. It does not deal with interstate commerce; it deals with child labor, wherever it is found in the United States, regardless of the ultimate outlet of the product manufactured.

The CHAIRMAN. We have been waiting 13 years to have the child-labor amendment ratified by the States, and I feel that it is imperative that we do something about child labor.

In some instances the legislature has refused to ratify it, and then the next legislature has ratified it. Under those circumstances—and I do not want to raise any constitutional question—I think there might be a very serious question as to whether or not a ratification

under those circumstances would be constitutional, and some very able lawyer, I am sure, will raise that question.

However, that is a question upon which the Supreme Court must pass.

Senator BARKLEY. We may expect that some able lawyers will raise every possible question against every constitutional or statutory restriction of child labor. They have been doing it, and that is why we have only 28 States which have ratified it in 13 years. But that does not mean that the American people may not be able to overcome, after a while, the very astute lawyers who raise constitutional questions on the subject.

The CHAIRMAN. I understand the Department of Labor takes the same position you do with reference to it, but I do not agree with the philosophy of the Department of Labor with reference to that, and I think it would be unfortunate if they do take that attitude.

Senator BARKLEY. I do not know whether the Department of Labor takes that attitude or not.

Mr. KEATING. Quite frankly, Mr. Chairman, if I imagined that the passage of this legislation would in any serious measure interfere with the ratification of the child-labor amendment, my advice to this committee would be to toss the legislation out the window, because, as I stated in the beginning, I fully agree with Senator Barkley that the problem of protecting the American child is not a State matter exclusively.

I will make another quotation from Senator Barkley's speech when he was in the House, when the issue of States' rights was raised. He said that he was as much of a States' rights man as any man in the House, and was prepared to defend States' rights, but he would not defend States' wrongs, and whenever any State refuses to set up certain minimum standards to protect American children, it is the duty of the Government, if it can do it under the Constitution, to intervene and see that those children are protected.

So that, so far as I am concerned, Senator, I agree with you 100 percent on the child-labor amendment. I do not want to do anything that will put a straw in the way of its ratification.

I know that some people believe that this will slow up ratification. I hope they are mistaken. Their guess is as good as mine; I do not know.

I wanted to refer to the bill by Senator Barkley, which was the final bill introduced, and which is a recasting of the original child-labor bill. As I recall it, there is a provision there raising the standard for extra hazardous occupations to 18 years. I think that is an excellent amendment. I do not think that any child should be permitted to work in a mine, or in other hazardous employment, before he is 18 years old. You have these three bills before you——

Senator BARKLEY. By the way, Mr. Chairman, I think it ought to be stated that Senator Clark, of Missouri, had previously introduced a bill along the same lines, which was referred to the Committee on Education and Labor. Yesterday he asked that that bill be referred to this committee, and it was done, so that that bill is before us also.

Senator JOHNSON. That bill, Mr. Chairman, is along the same line as the original Wheeler bill, the prison-goods approach. That is the Clark bill.

The CHAIRMAN. When the committee comes to consider it, we will consider all these bills together, and the committee may be able to work out something with all the bills.

Mr. KEATING. Mr. Chairman, I think we are in a rather happy situation. We have these three bills introduced here by Senators in whom I have the utmost confidence. I think that Senators Wheeler, Barkley, and Johnson are just as much interested in protecting the children of America as I could possibly be. What I hope for is that out of this committee will come the strongest possible bill that can be framed. I hope that the fact that the Supreme Court 20 years ago, by this very narrow margin, held the original act unconstitutional will not cause this committee to hesitate to pass a similar bill, very broadly changed, and it has been changed in both Senator Barkley's bill, Senator Johnson's bill, and the Johnson-Wheeler bill, because I hope that if the legislation is enacted the representatives of the Government will bodly challenge the wisdom of the child-labor decision, just as they finally challenged, in the *Washington case*, the minimum-wage law.

As I said before, I am not a prophet. I have about the poorest record as a prophet of any man in this room, but still I cannot help feeling that in view of all that has developed in recent years, we would be fully justified in taking that case before the Supreme Court again and asking the Court to render a decision which, in my judgment, would be more in keeping with modern conditions.

Senator MINTON. We ought not to lose sight of the fact that the Supreme Court, in another case, said a very startling thing that is a signal or warning to us, it seems to me, as to whether or not, if you ratified the child-labor amendment, it would be constitutional, since it has been out in the woods so long.

Senator BARKLEY. There was no limitation placed upon it.

Senator MINTON. The Supreme Court says that that carries with it the implied limitation of a reasonable time. It said it by way of dictum, but it took most of its opinion to say it, in 256 U. S.——

Mr. KEATING. If the Supreme Court is going on the theory that there are all kinds of implied powers in the Constitution——

Senator MINTON. They have been going on that theory for years.

Mr. KEATING. I know, Senator; and, as a consequence, we have not very much of a Constitution left, because, when the Supreme Court wishes to decide a case one way, it finds an implied power. There is, of course, nothing in the Constitution suggesting such an implied power. An amendment is submitted to the States, and, when the States ratify it, it becomes part of the Constitution.

Again we get back to the old proposition——

Senator BARKLEY. In two or three instances Congress has fixed a 7-year limitation on the ratification of an amendment, and certainly it might be implied that where Congress had fixed no such limitation, or any other limitation, it did not intend that there should be one.

Senaor MINTON. Mr. Justice Van Devanter spends two-thirds of his opinion in *Dillon* v. *Glass* (256 U. S.), pointing out that if the States had more than a reasonable length of time, the amendment is not properly ratified, and he points out that there are now four amendments pending before the people, two of them since 1789, one in 1810, and another in 1869. Those oldtimers, I know, are pending; two of them since 1789.

Senator BARKLEY. Of course, not having been ratified after that length of time, they are not before the Court.

Senator ANDREWS. Mr. Chairman, I did not intend to say anything on that subject, but I briefed that subject, and I shall be glad to hand a copy of the brief to the chairman of the committee. It is not even a judicial question, as to whether an amendment is ratified or not; it never has been.

The CHAIRMAN. We will be glad to have your opinion.

Senator MINTON. The Supreme Court passed on it.

Senator BARKLEY. They commented on it; they did not pass on it.

Senator MINTON. They passed upon whether Congress put a limitation of 7 years on it.

Senator BARKLEY. And they said we could.

Senator MINTON. They said we could.

Senator BARKLEY. That is all they had before them.

Senator ANDREWS. But if there is no limitation——

Senator MINTON. They certainly assumed to pass upon whether an amendment to the Constitution was properly ratified in *Dillon* v. *Glass*, in 256 U. S.

Senator BARKLEY. The point was made there that Congress had no right to fix a limitation.

Senator MINTON. That is what they argued, and they held that Congress did have that power.

Senator BARKLEY. But this particular question was not before them.

Senator MINTON. Mr. Justice Van Devanter took two-thirds of that opinion to state that they had the power to put a limitation on, by saying that if they did not put a limitation on, and more than a reasonable time expired, it would not be good.

That is something that you have to consider in determining whether you want to pass legislation, or wait for an amendment.

Mr. KEATING. If the members of the committee have no questions to ask, I have concluded my presentation.

The CHAIRMAN. I desire to introduce at this time a letter from Rev. Almon R. Pepper, executive secretary of the Department of Christian Social Service, the National Council, Protestant Episcopal Church in the United States of America, Church Missions House, New York, addressed to Senator Johnson and myself, dated May 11, 1937. He says:

DEAR SENATORS: I am indeed sorry that an important church conference keeps me from accepting your invitation to appear at your committee hearing on the Wheeler-Johnson child-labor bill, S. 2226.

This department of the National Council of the Episcopal Church is organized to coordinate and promote our church's interest in social welfare. Repeatedly our church, through its many jurisdictional divisions, has gone on record as opposed to the exploitation of children in industry. It is so opposed at the present time.

I have studied and considered your bill and have sought advice on its legal and economic aspects. It is my opinion that the Wheeler-Johnson child-labor bill (S. 2226), is worthy legislation, conceived with humanitarian purposes in mind. I urge its enactment as a practical measure in carrying out the expressed desires of vast numbers of our church members.

In arriving at this conclusion I have consulted with the Rt. Rev. Philip Cook, bishop of Delaware, the Rt. Rev. Charles K. Gilbert, suffragan bishop of New York, and the Very Rev. Arthur B. Kinsolving II, dean of the Long Island Cathedral. These men give their endorsement to the bill on the basis I have stated above.

Senator BARKLEY. Do you know, Senator, whether this organization and whether this eminent divine have opposed the ratification of the child-labor amendment?

The CHAIRMAN. I know nothing about it, except what they have said there. I assume they have not.

Senator BARKLEY. I am asking simply for information. I know there have been organizations claiming to be against child labor who have opposed the ratification of this child-labor amendment to the Constitution, and I should like the opportunity to inquire of this man and this organization whether they have opposed the ratification of the amendment. I do not know whether they have or not. I have no information on the subject.

The CHAIRMAN. I have no information, but I am assuming, from what he says in his letter, that he is interested. He calls attention not only to himself but also to the three different bishops of the Episcopal Church.

Senator BARKLEY. May I have permission to write to those bishops and ask their attitude on the amendment, and to put their letters into the record?

The CHAIRMAN. You do not need any permission.

Senator BARKLEY. I think I shall do it.

The CHAIRMAN. I will be happy to have you do so, so far as I am concerned.

Senator SCHWARTZ. Mr. Chairman, I was not here when you began the meeting, and I just wanted to know whether the National Consumers' League is represented this morning. I have a letter from the general secretary, dated yesterday, in which they say that they are just advised of the meeting, and they desire an opportunity to be heard at what they call a second hearing. I suppose that means a little later.

The CHAIRMAN. I have not paid any attention to the witnesses myself, because I have been too busy with other matters. The hearing was set down for today, and anybody who wants an opportunity to be heard will be given an opportunity to be heard.

Senator SCHWARTZ. May we suggest to them how much time they might have to appear?

The CHAIRMAN. If they want to be heard, I think they ought to be notified to come; at the conclusion of the hearings today I will set another definite date. I do not think we ought to prolong these hearings indefinitely if we expect to get any legislation this session.

Senator SCHWARTZ. If you will just notify them, that will be sufficient.

Senator BARKLEY. It is obvious that a hearing on this important bill could not be concluded in one day, and perhaps not in several days. There are large numbers of people who want to be heard on the subject, and I think they ought to be given an opportunity.

The CHAIRMAN. They will be given an opportunity, but I do not want these hearings prolonged for an indefinite period. We are going to set some definite limit, if I have anything to say about it, as to when they are going to be ended.

The CHAIRMAN. Dr. Blackwelder.

STATEMENT OF OSCAR F. BLACKWELDER, PASTOR, LUTHERAN CHURCH OF THE REFORMATION, WASHINGTON, D. C.

Dr. BLACKWELDER. Mr. Chairman, I had a short statement——

The CHAIRMAN. You may state your name to the committee.

Dr. BLACKWELDER. Oscar F. Blackwelder, pastor of the Lutheran Church of the Reformation, Washington, D. C.

Senator BARKLEY. Do you speak as an individual or as a member of some organization or group?

Dr. BLACKWELDER. Both.

Senator BARKLEY. What is the group?

Dr. BLACKWELDER. The United Lutheran Church in America.

Senator BARKLEY. Have you been authorized by resolution to speak for that group?

Dr. BLACKWELDER. I have been authorized by the president.

The CHAIRMAN. All right, Doctor; proceed.

Dr. BLACKWELDER. I am here at the request of Dr. Frederick H. Knubel, president of the United Lutheran Church in America, to express our attitude with respect to the child-labor legislation now being considered by this committee. I am pastor of the Lutheran Church of the Reformation, Washington, D. C.

The United Lutheran Church in America has always been opposed to the exploitation of children in industry. We have carefully considered the Wheeler-Johnson child-labor bill, S. 2226, and have secured competent legal and economic advice.

We believe that the Wheeler-Johnson bill should be enacted into law because, in our opinion, it is a humanitarian and enforceable measure which is likely to achieve the results at which it is aimed. It is not subject to criticism on the ground that it makes possible the regimentation of youth, something to which the church is adamantly opposed.

The bill impresses us as a simple and direct measure which is fair to all concerned and which is effectively enforceable with a minimum of enforcement cost.

Senator LONERGAN. Have you studied the Lonergan bill and the Clark bill?

Dr. BLACKWELDER. I have not specially studied the Clark bill, but I have gone through the Barkley bill.

Senator BARKLEY. With what result?

Dr. BLACKWELDER. I do not think it is as clear, as direct, and as economically enforceable as the Wheeler-Johnson bill.

Senator BARKLEY. Why?

Dr. BLACKWELDER. Senator, I do not pose as an expert in any sense.

Senator BARKLEY. You are posing as an expert, and a legal expert.

Dr. BLACKWELDER. No.

Senator BARKLEY. When you say that a bill is legally and economically more enforceable than some other bill, you are expressing your opinion, Doctor, whether you claim to be an expert or not.

Dr. BLACKWELDER. I speak as a layman in the law.

Senator BARKLEY. I know.

Dr. BLACKWELDER. My own work definitely concerns education, morals, and social welfare, and it is from that point of view especially that I speak.

Senator BARKLEY. If you have reached the decision that the bill I have introduced is less enforceable than the other bill, you certainly have a reason for it.

Dr. BLACKWELDER. Senator, to me it is more complicated. I feel that the Wheeler-Johnson bill is more to the point, and I feel that it does not involve as much necessary overhead in the organization.

Senator BARKLEY. Do you know what overhead it would involve?

Dr. BLACKWELDER. As I went through the bill, it seemed to me to involve a rather complicated overhead.

Senator BARKLEY. Do you think it is more complicated to have a direct law prohibiting the shipment of child-made goods into any State in interstate commerce than to have a law with two prongs, hitting it from that angle and also from the angle of making it subject to State laws when it gets into the State? Which of those would be the less complicated?

Dr. BLACKWELDER. I still feel that the Wheeler-Johnson bill is simpler from my point of view.

Senator BARKLEY. You still maintain that the combination is more simple than the direct approach?

Dr. BLACKWELDER. I think it is more to the point.

Senator BARKLEY. What is your attitude toward the child-labor amendment?

Dr. BLACKWELDER. I am strictly for it.

Senator BARKLEY. You are?

Dr. BLACKWELDER. Yes, sir.

Senator BARKLEY. You are for its ratification?

Dr. BLACKWELDER. Yes, sir. I am for anything that will prevent child labor in the United States.

Senator BARKLEY. Is that the attitude of the group for which you speak?

Dr. BLACKWELDER. I think it is.

Senator BARKLEY. Have you any information as to the question of whether the passage of a bill by Congress dealing partially with it through the interstate-commerce channel would tend to offer reasons, in States where there is vigorous opposition by certain interests to the ratification of the child-labor amendment, for a lessening or slackening of the effort to secure the ratification in the remaining eight States, if the people were permitted to go out and say, "Congress has already dealt with it; Congress has passed a law, and now it is unnecessary to ratify it?"

What is your reaction to that?

Dr. BLACKWELDER. I just do not know.

Senator BARKLEY. If you do not know, I will not press it.

Dr. BLACKWELDER. The Wheeler-Johnson bill seems to me to be an effective move to outlaw child labor, to which we are sincerely opposed.

Senator BARKLEY. The prison-made goods idea depends entirely on whether the States would enact legislation prohibiting the sale and distribution of child-made goods within their borders.

Dr. BLACKWELDER. Yes.

Senator BARKLEY. If no State had such a law, it would not be effective at all, would it?

Dr. BLACKWELDER. No.

Senator BARKLEY. And it would not be effective in any State that did not have such a law, regardless of any other States?

Senator JOHNSON. But that is only part of the Johnson-Wheeler bill.

Senator BARKLEY. I understand.

Senator JOHNSON. That is only one part of it.

Senator BARKLEY. I am talking about the prison-made-goods idea, and not your original idea, Senator.

The CHAIRMAN. In the Wheeler-Johnson bill there are two provisions.

Senator BARKLEY. I understand.

The CHAIRMAN. You were talking about the enforcement. Let me call your attention to section 2 of the Barkley bill, S. 2345:

SEC. 2 (a). The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this act.

(b) The Chief of the Children's Bureau or any persons designated by him, pursuant to the regulations issued under the preceding subsection, shall have authority to enter and inspect at any time factories or other places in which articles are produced or held for interstate commerce and to inspect records relating to the employment of minors or to the shipment of articles therefrom, and to make periodic reports of such inspections.

(c) The Secretary of Labor, with the consent of the State agencies charged with the administration of State laws relating to the employment of minors, may utilize such State and local officers concerned with the administration of these laws as he may find necessary from time to time for the administration of this Act.

(d) Whenever the Secretary of Labor shall report any violation of this act to the Attorney General and furnish him with substantial evidence in suppport thereof, the Attorney General shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided.

As a matter of fact, of course, with reference to section (d), if this law, or either law, passes, it will be the duty of the Attorney General, without the necessity of a report from the Secretary of Labor, to prosecute a violation of the law. I have never known any legislation to be drafted heretofore which made it necessary for the Secretary of Labor or somebody else to order the Attorney General to do it. As a matter of fact, when it is called to his attention by anybody, whether it be by the Secretary of Labor or by the humblest citizen of the country, he is supposed to do his duty. It may be we are entering upon a new period.

Senator BARKLEY. Mr. Chairman, this, of course, merely authorizes the Department of Labor, under which this law is to be enforced, if it is to be enacted, to make the necessary investigations to determine whether violations of the law have occurred, and, if they find that violations of the law have occurred, simply to report to the Department of Justice, which has to conduct all prosecutions. The Bureau of Internal Revenue does the same thing; it makes investigations of violations of the income-tax and other revenue laws, and reports those things to the Department of Justice, which prosecutes, if there is a violation of law.

The CHAIRMAN. Of course.

Senator BARKLEY. All the departments do it. There is nothing new in this principle.

The CHAIRMAN. There is nothing new in it, except that it has never been written into a law.

Senator BARKLEY. I think it has been written into numerous laws. Where the administration of an act is put within a department, that department has itself no power to prosecute, because that is the duty of the Department of Justice, the facts are merely reported to the Attorney General, and then he, of course, proceeds with the prosecution. That is true in many departments.

The CHAIRMAN. If anybody reports to the Attorney General a violation of any law, whether it be the Secretary of Agriculture, the Secretary of Labor, or the Secretary of any other department, it is the duty of the Attorney General to prosecute.

Senator BARKLEY. Of course; but somebody has to be charged with the duty of investigation.

The CHAIRMAN. That is true.

Senator JOHNSON. Senator, may I call your attention to the Wheeler-Johnson bill? It takes advantage of the Social Security Board statistics and makes them available and uses them. They are already set up. They have the ages of every person employed, in every factory, every mine, or every employment all over the country. The Wheeler-Johnson bill takes advantage of that information and makes it available to the Secretary of Labor, and the Secretary of Labor can act upon that.

In this bill the Secretary of Labor must set up a new bureau to gather all the information that is already gathered by another Washington bureau. It is just a duplication, and I think the pastor is exactly right when he says that our bill is much simpler in administration.

The CHAIRMAN. Section 3 of the Barkley bill reads in part as follows:

SEC. 3. That any person who violates any of the provisions of section 1 of this act, or who refuses or obstructs entry or inspection authorized by section 2 of this act, shall for each offense prior to the first conviction of such person under the provisions of this act, be punished by a fine of not more than $200, and shall for each offense subsequent to such conviction be punished by a fine of not more than $1,000, nor less than $100, or by imprisonment for not more than three months, or by both such fine and imprisonment in the discretion of the court: *Provided*, That no dealer shall be prosecuted under the provisions of this act for a shipment or delivery for shipment who has secured a representation in writing from the person by whom the goods shipped or delivered for shipment were produced, resident in the United States, to the effect that such articles were not produced in a place the shipment of which therefrom is prohibited under section 1; and in such event, if such representation contains any false statement of a material fact, the person furnishing the same shall be amenable to prosecution and to the fine or imprisonment provided by this section for violation of the provisions of this Act.

Under that provision someone might go to a manufacturer and say to him, "We want to come in and inspect your factory." In the event that the manufacturer should say, "We do not want you to now", you would have a question as to what constitutes a refusal or obstruction to the inspection of the factory. In my judgment, it would lead to many disputes.

Dr. BLACKWELDER. May I ask a question?

The CHAIRMAN. Yes.

Dr. BLACKWELDER. May I ask Senator Barkley just what is the meaning, on page 5, of section (*e*)? That is one paragraph that made me feel it was rather complicated. Just what does that mean? Is that correctly printed?

Senator BARKLEY. It ought to be "produced." That is a typographical error. It should be "produced."

I do not want to get into an argument with you here about that matter, Mr. Chairman, but it seems to me that if you have an effective child-labor law you have to have somebody who has the power to investigate and inspect. Every State in the Union that prohibits the working of children under a certain age has an inspector to go into the factories and find out whether the law is being violated or not. Certainly, we cannot object to the Government agency which is charged with the enforcement of a child-labor law having the right to make an investigation or an inspection to determine whether there is a violation or not. It may not always appear from the records of some other department.

I imagine that the records of the Social Security Board would be helpful, because they are made available, and they ought to be. All departmental records ought to be made available to the Department of Labor or any other department charged with the enforcement of this law. But that may not be sufficient. They may not tell the whole story.

The CHAIRMAN. I do not want to argue about that.

Senator BARKLEY. I do not see why there should be any objection to some Government agency finding out whether there is a violation of the law and turning the facts over to the Department of Justice.

The CHAIRMAN. Of course, there should not be; but, under the provisions of this bill, in my judgment, if you want it to be held unconstitutional by putting this provision in, you set up a provision which, in my judgment, would give the Court the best excuse for holding it unconstitutional that I can conceive of, because you say that any person who violates any of the provisions of the act, or who refuses or obstructs entry or inspection, shall be punished, and so forth.

Senator BARKLEY. The Government has for a long time, under the commerce clause, been exercising the right to inspect railroad engines, cars, cabooses, handcars, tracks, and everything else used as a facility of interstate commerce.

The CHAIRMAN. That is quite a different thing. The operation of most railroads constitutes interstate commerce. The Court has held, and it will continue to hold for all time, unless you have an amendment to the Constitution, that the manufacturing of goods within one State is not interstate commerce.

Senator BARKLEY. I am not so certain about that.

Senator MINTON. The bill would not be good at all unless you could sustain it under the commerce clause.

The CHAIRMAN. But this goes further. You are not talking about the shipment of the goods.

Senator MINTON. But you are talking about the regulation to make effective the nonshipment. Certainly, if you have a right to regulate the shipment, you have a right to make your regulations effective. The Court has decided that in many cases.

Senator BARKLEY. The Supreme Court would not hold unconstitutional a provision that enabled the Government to ascertain the facts and to determine, first, whether these goods are in interstate commerce or intended for interstate commerce, and, if so, whether they were manufactured in violation of the act, which is based upon the interstate-commerce clause.

The CHAIRMAN. If you put in a provision there punishing a person who refuses to let the bureau in Washington come into his factory at any time it wants to, and for any purpose, you are going to meet that objection to it. However, I do not want to argue the matter.

Have you anything further to say?

Dr. BLACKWELDER. No.

The CHAIRMAN. The next witness is Mr. Ehrich.

Mr. BOWES. Mr. Chairman, Mr. Ehrich is afflicted with laryngitis. I will read his statement, and he will answer any questions you have to put, if you will grant him the courtesy of an interpolator, so to speak.

STATEMENT OF MANFRED W. EHRICH, NEW YORK, N. Y.

Mr. BOWES. The full name of the witness is Manfred W. Ehrich.

Senator BARKLEY. What is his occupation?

Mr. BOWES. He is an attorney at law in New York City.

Senator BARKLEY. In what capacity does he speak here?

Mr. BOWES. As an individual who has been interested in putting an end to child labor over a period of 30 years, and who has been active in the movement.

Senator BARKLEY. Does he speak for any group in addition to his individual capacity?

Mr. BOWES. I do not believe so.

The CHAIRMAN. Ask him if he does.

Do you speak for any group?

Mr. EHRICH. I do not. I am chairman of the New York child-labor committee, but the committee is split on this subject, and I cannot speak for anybody but myself.

The CHAIRMAN. I did not catch that.

Senator BARKLEY. He says he is chairman of the New York child-labor committee, but the committee is split on this legislation, and he does not speak for anybody but himself.

Mr. BOWES. This is Mr. Ehrich's prepared statement, which I will read, with the consent of the chairman.

Mr. EHRICH (through Mr. Bowes). My opinion on the Wheeler-Johnson bill is based on 30 years' experience with child-labor legislation. In my judgment, the Wheeler-Johnson bill fairly covers all reasonable methods of a Federal approach to the child-labor problem.

There are but few manufacturers who do not ship in interstate commerce, and most of them look to the large markets of the Eastern States where high child-labor standards have been enacted. I am not disturbed by the complications arising from the diversity of State laws. The great majority of manufacturers will feel constrained to comply with the high standards of the large consuming States.

There should be no extraordinary difficulty of enforcement. An examination of the applications for account numbers under the Social Security Act will disclose the ages of all employed minors, and it should be easy to evolve a system by which the employers of the children can be ascertained. A mere notice to the local freight

agent will generally be sufficient to stop shipments and so compel the abandonment of child employment. It has been said that the goods might be transported in trucks. Certainly no manufacturer is going to change his methods of transportation for the sake of obtaining the illusory benefits of employing young children. Of course, some manufacturers already ship by truck. Inquiry in the industry will quickly disclose the names and addresses of their principal customers.

I am not disturbed by the criticism that the bill prohibits only goods manufactured through the use of child labor instead of prohibiting the transportation of any goods made in a factory in which children are employed. Under the terms of the present bill, once it is proved that a child was employed in the factory within the 6 months' period, the burden of proof is on the employer to show that the child's labor was not used in the manufacture of the goods allegedly shipped in violation of law. That proof would generally be exceedingly difficult, and I am sure that an employer, if he did succeed once, would not assume the burden a second time.

There is no real economy in child labor. Industry in the main will drop child labor if a little pressure is exercised. This is shown by the readiness with which industry outlawed child labor under the N. R. A. codes. This was a voluntary act on the part of industry, adopted readily as soon as it was suggested.

The CHAIRMAN. Have you finished, Mr. Ehrich?

Mr. EHRICH. That is my statement.

The CHAIRMAN. Mr. Merriweather.

STATEMENT OF LEE MERRIWEATHER, REPRESENTING NATIONAL COMMITTEE FOR THE PROTECTION OF CHILD, FAMILY, SCHOOL, AND CHURCH, ST. LOUIS, MO.

The CHAIRMAN. You may state your full name.

Mr. MERRIWEATHER. Lee Merriweather.

The CHAIRMAN. What is your business, profession, or occupation?

Mr. MERRIWEATHER. Lawyer.

The CHAIRMAN. Where are you from, Mr. Merriweather?

Mr. MERRIWEATHER. St. Louis.

I have come as a representative and as a member of the National Committee for the Protection of Child, Family, School, and Church.

The CHAIRMAN. I did not catch that.

Mr. MERRIWEATHER. It is a rather long name—the National Committee for the Protection of Child, Family, School, and Church, an organization which has been consistently opposed to child labor in any injurious form, in factories, and so forth, but has opposed the child-labor amendment to the Constitution on the ground that it goes too far, and would prevent child labor in the home and on the farm, up to the age of 18 years; but it is opposed to child labor in its real meaning.

Senator BARKLEY. To what extent has your organization engaged in organized effort to defeat the ratification of the child-labor amendment?

Mr. MERRIWEATHER. To the best of its ability to do so.

Senator BARKLEY. Has that been considerable?

Mr. MERRIWEATHER. It has; yes.

Senator BARKLEY. Do you claim part of the credit for the delay up to this time in the ratification?

Mr. MERRIWEATHER. We would feel flattered if that were the truth, Senator. We think it is. Of course, we do not know to what extent. We have presented arguments before various——

Senator BARKLEY. You expect your organization to continue to oppose the ratification of the child-labor amendment?

Mr. MERRIWEATHER. Yes.

Senator BARKLEY. And you are personally opposed to it?

Mr. MERRIWEATHER. I am opposed to it, Senator, because it goes too far. In our judgment, it would prohibit the labor of a 17-year-old boy on his own father's farm.

Senator BARKLEY. Of course, that is a matter of opinion, and, even if it did, it would depend upon whether Congress was foolish enough to enact any such law.

Mr. MERRIWEATHER. Senator, while I have the highest respect for the present Congress, only God Almighty can tell what some future Congress might do.

Senator BARKLEY. It is up to the people what kind of Congress you are going to have.

Mr. MERRIWEATHER. They might elect a Congress——

The CHAIRMAN. You do not think that there is any Congress of the United States, do you, that would ever attempt to prohibit children from working in their own homes, or in their father's fields?

Mr. MERRIWEATHER. Senator, the thought that animates our organization is that it is not a wise thing to give a dangerous power on the theory that it might not be exercised.

The CHAIRMAN. You might say that under the Constitution as it is Congress might have dangerous powers if they exercised them; but you have to give Congress at least some credit for acting judiciously.

Mr. MERRIWEATHER. I hope they would; but we are opposed to giving unnecessary power on the theory that it might not be exercised.

We approve the principle of this Wheeler-Johnson bill because it seems to us the better way to go about it, and would leave the powers of the several States to determine what they want.

I think, as was said by the witness who preceded me, that when the large consumer States, like New York, for example, adopt a law such as was recently adopted in New York, and which, I understand, is now merely awaiting the signature of the Governor—when they prohibit the sale of goods made by child labor, it is our judgment that there would be very few manufacturers in other States which had no such law who would be willing to forego the market of that great State, as the witness said, for the illusory advantages of employing children.

Senator BARKLEY. Do you think the enactment of this legislation would give you and your organization an additional argument to submit to the people against the ratification of the child-labor amendment?

Mr. MERRIWEATHER. Senator, we do not need any additional argument, we think. We think the argument is very strong as it is, and we favor this legislation because we think it would really accomplish the abolition of child labor. That is what we want. We think,

as has been suggested here today, that even if you secured the ratification by the other eight States, it is a very serious question whether the ratification, after so many years, would be held constitutional.

Senator BARKLEY. That is not the motive, though, that prompts you to oppose the amendment.

Mr. MERRIWEATHER. What is the motive?

Senator BARKLEY. The possibility that the Supreme Court might hold that it had floated around over the country too long, and therefore was unconstitutional, is not the motive that caused you to oppose it.

Mr. MERRIWEATHER. Of course, we are opposed to it for the reasons I have stated.

Senator BARKLEY. Do you think that a child under 18 years of age ought to be allowed to work in a mine, or around dangerous machinery?

Mr. MERRIWEATHER. I would question very much whether he should be allowed to work in a mine. As labor commissioner in my State on one occasion I had something to do with getting legislation passed prohibiting the labor of young persons in mines.

Senator BARKLEY. You realize that if Congress is to be given any authority to regulate child labor, and if, in a single industry—a mine or other industry—a child ought not to be allowed to work under 18 years of age, Congress could not prevent that unless the amendment fixed the age limit.

Mr. MERRIWEATHER. Certainly. This amendment would give Congress the power to prohibit the labor of a child in his own mother's home.

Senator BARKLEY. Oh, yes; of course.

Mr. MERRIWEATHER. And when an amendment was offered in the Senate to exclude home labor, that amendment was voted down, seeming to show that the proponents of the bill wanted it to apply to children in the home.

Senator BARKLEY. So does the Constitution give Congress power to declare war every day, but it does not do it.

Mr. Chairman, I am sorry I have to leave, but I must be on the floor of the Senate.

The CHAIRMAN. All right, Mr. Merriweather, proceed with your statement. Have you finished?

Mr. MERRIWEATHER. Yes, sir. We want to go on record as upholding the principle of this legislation. We are not constitutional lawyers, and we are not saying that it is not subject to improvement.

The CHAIRMAN. Have you examined the Barkley bill?

Mr. MERRIWEATHER. I have not, Senator. I have read very carefully the Wheeler-Johnson bill, and it seems to me and to my associates to be correct in principle, and it would prevent child labor in any State that has legislation forbidding the sale of child-made goods.

Senator ANDREWS. Would you object to the child-labor amendment if it prohibited the employment of persons under the age of 18 years for hire?

Mr. MERRIWEATHER. I think that would remove much of its objection, but that amendment was offered when the proposed amendment was pending in the Senate.

Senator ANDREWS. Is not that the reason the amendment was never passed, that it required a number of States——

Mr. MERRIWEATHER. I think so. The "for hire" would exclude the labor of a child working in his father's orchard.

Senator MINTON. Unless his father hired him.

Mr. MERRIWEATHER. Unless his father hired him. That was voted down, according to my understanding.

Senator ANDREWS. That is correct.

Senator SCHWARTZ. The "for hire" would not exclude the employment of a large number of children in a family in a sweatshop, where they were working at their homes.

Mr. MERRIWEATHER. In their own homes, for hire.

Senator SCHWARTZ. Under a contract with the parent, with which the child had nothing to do.

Mr. MERRIWEATHER. We think that to prohibit the labor of the youth of the Nation, which would amount to some 40,000,000 people, would be a bad thing. If I may use a personal illustration, when I was 15 my father had financial reverses and I had to go to work. I should have resented it very bitterly had my country told me I could not do so; and I have never observed that it did me any harm.

Senator MINTON. How old is this organization of yours?

Mr. MERRIWEATHER. About 4 years.

Senator MINTON. Who organized it?

Mr. MERRIWEATHER. The prime mover was Mr. Sterling Edmunds, of St. Louis.

Senator MINTON. Who is he?

Mr. MERRIWEATHER. A constitutional lawyer, and a man of very high standing.

Senator MINTON. What are his other connections?

Mr. MERRIWEATHER. None. There is no member of our organization who is an employer of child labor.

Senator MINTON. With regard to this constitutional lawyer, what are his connections in which he gained that reputation as a constitutional lawyer?

Mr. MERRIWEATHER. Simply because he has practiced law, and in many cases had constitutional questions come up before him.

Senator MINTON. Is he what we know as a corporation lawyer?

Mr. MERRIWEATHER. I should not say exclusively, or even mainly, so.

Senator SCHWARTZ. Do you know whether any of the attorneys who are members of your organization represent corporations that do employ children?

Mr. MERRIWEATHER. Not one of them.

Senator SCHWARTZ. Do you know who their clients are?

Mr. MERRIWEATHER. I have a complete list of them.

Senator SCHWARTZ. How many of them are there?

Mr. MERRIWEATHER. There are very few lawyers. Would you like to have me read the list?

Senator MINTON. Is that a complete list of the organization?

Mr. MERRIWEATHER. No; of the executive committee.

Senator MINTON. How many members does your organization have?

Mr. MERRIWEATHER. It is a very loose organization. We have members all over the United States.

Senator MINTON. Do you have any idea about how many?

Mr. MERRIWEATHER. No, sir; I have not. A good many thousands.

Senator MINTON. How do you get your membership?

Mr. MERRIWEATHER. Simply through appeals to the public, and our literature stating our position.

Senator MINTON. Do you have dues?

Mr. MERRIWEATHER. No dues; it is voluntary.

Senator MINTON. Who finances it?

Mr. MERRIWEATHER. It is voluntary; $1 a year.

Senator MINTON. Do you finance it entirely by voluntary subscriptions?

Mr. MERRIWEATHER. Yes. We have very few expenses.

Senator MINTON. Who finances the expenses you do have?

Mr. MERRIWEATHER. This $1-a-year dues; our expenses are simply for literature.

Senator MINTON. Do you have a headquarters to send out your literature?

Mr. MERRIWEATHER. The headquarters are at 1218 Olive Street, St. Louis.

Senator MINTON. How many people are employed in that headquarters?

Mr. MERRIWEATHER. Just a stenographer. Mr. Edmunds does not draw a dollar pay. I have given some of my time. I have never accepted a cent. It is just a matter of feeling on this matter.

Senator MINTON. Was it organized to oppose this ratification of the child-labor amendment, and has it taken in the protection of the family, the school, and the church——

Mr. MERRIWEATHER. It is organized to do away with child labor.

Senator MINTON. That is just a big name—to protect the child, the family, the school, and the church, and everything, by opposing this amendment.

Mr. MERRIWEATHER. The wording of the proposed child-labor amendment would give the Government the power, if Congress saw fit to exercise it, of interfering with all these things.

Senator MINTON. Would it interfere with the child's relation to his family?

Mr. MERRIWEATHER. Yes.

Senator MINTON. To his school?

Mr. MERRIWEATHER. Yes.

Senator MINTON. And to his church?

Mr. MERRIWEATHER. It would.

The CHAIRMAN. One of the objections which some of the churches had was to the use of the word "control", as I recall it.

Mr. MERRIWEATHER. "Control." Senator, it might apply to mental labor, too. It would apply to the schools.

The CHAIRMAN. I do not agree with your views about it, but I know that some people have some very deep-seated convictions with reference to the amendment.

Is Mr. Lovell here?

Mr. MERRIWEATHER. I should like to leave this list with you.

The CHAIRMAN. Very well. Give it to the reporter.

Mr. MERRIWEATHER. That contains a list of all the active executive committee.

The list is as follows:

Mrs. John Balch, secretary, Sentinels of the Republic, Milton, Mass.

Rev. John J. Butler, pastor, St. Leo's Catholic Church, St. Louis, Mo.

Richard Heath Dabney, professor of history, University, Va.

John S. Dean, lawyer, Topeka, Kans.

Sterling E. Edmunds, lawyer, St. Louis, Mo.

Charles F. Fletchinger, chairman, Louisiana Committee Opposed to the Federal Child-Labor Amendment, New Orleans, La.

Austen G. Fox, lawyer, New York, N. Y.

William E. Gonzales, publisher, Columbia, S. C.

William D. Guthrie, former Ruggles professor of constitutional law, Columbia University; ex-president, New York State Bar Association and of the Association of the Bar of the City of New York, New York, N. Y.

W. Scott Hancock, commander in chief, Sons of Confederate Veterans, St. Louis, Mo.

Judge George C. Hitchcock, St. Louis, Mo.

Walter L. Hopkins, former commander in chief, Sons of Confederate Veterans, Richmond, Va.

Frederick P. Kenkel, director, Central Bureau Central Verein, St. Louis, Mo.

Miss Mary G. Kilbreth, Southampton, N. Y.

John H. Kirby, lumberman, Houston, Tex.

Charles E. Lane, lawyer, Cheyenne, Wyo.

Harry Preston Lawther, former president, American Law Institute, Dallas, Tex.

Alexander Lincoln, president, Sentinels of the Republic, Boston, Mass.

Clarence E. Martin, former president, American Bar Association, Martinsburg, W. Va.

Arthur M. McCrillis, former president general, National Society Sons of the American Revolution, Providence, R. I.

Mrs. Kenneth U. Meguire, chairman, Kentucky Committee for Protection of Child, Family, School, and Church, Louisville, Ky.

J. F. E. Nickelsburg, American Lutheran Publicity Committee, New York, N. Y.

Gen. Rice A. Pierce, former commander in chief, United Confederate Veterans, Union City, Tenn.

Thomas M. Pierce, lawyer, St. Louis, Mo.

Dr. Henry S. Pritchett, president, Carnegie Foundation for Advancement of Teaching, New York, N. Y.

John E. Riley, broker, St. Louis, Mo.

Henry D. Sharpe, president, Providence Community Fund, Providence, R. I.

A. C. Stellhorn, secretary of schools, Evangelical Lutheran Synod of Missouri, Ohio, and other States, St. Louis, Mo.

Judge Edmund F. Trabue, Louisville, Ky.

Ira E. Wright, merchant, St. Louis, Mo.

STATEMENT OF ARTHUR J. LOVELL, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, WASHINGTON, D. C.

Mr. LOVELL. Mr. Chairman and gentlemen, my name is Arthur J. Lovell. I am vice president and national legislative representative of the Brotherhood of Locomotive Firemen and Enginemen. My address is No. 10 Independence Avenue, Washington, D. C. I have the honor to speak for the organization.

Mr. Chairman and gentlemen of the committee, our organization has been on record for many, many years in support of the child-labor constitutional amendment. Let me read from the convention action of 1925——

The CHAIRMAN. It is not necessary; I know they have supported it, and the committee knows it.

Mr. LOVELL. That was reaffirmed by the convention in 1928 and again in 1931, and we still stand in the same consistent position, as supporting the national child-labor amendment.

The CHAIRMAN. I do not think there is anybody on the committee that does not, so you are not in disagreement with us on that.

Mr. LOVELL. So far as the three bills now pending before your committee are concerned, we are somewhat apprehensive that these may nullify or vitiate, and perhaps lull into indifference public sentiment in support of the ratification of the child-labor amendment.

The CHAIRMAN. Who gave you that information? Did you not get that information from the Department of Labor?

Mr. LOVELL. No, sir.

The CHAIRMAN. Was not the suggestion made to you by the Department of Labor?

Mr. LOVELL. No, sir. That is my own analysis.

The CHAIRMAN. Why do you say that?

Mr. LOVELL. Just from a reading of the three bills.

The CHAIRMAN. You know that the Department of Labor has opposed the passage of any child-labor bill, do you not?

Mr. LOVELL. No; I do not.

The CHAIRMAN. Notwithstanding the fact that this amendment has been before the people for 13 years, some of the people up in the Department are taking exactly the same attitude you have, and they have been propagandizing certain people with reference to the matter, have they not?

Mr. LOVELL. I do not know, but, so far as propaganda goes, we do not fall for that, Senator. We have grown accustomed to it.

The CHAIRMAN. I am not so sure about that, Mr. Lovell. I have felt that there were times when you were or have been susceptible to propaganda.

Mr. LOVELL. Perhaps we did, but not to my knowledge, and not intentionally. We have been combatting it for 50 years.

I have conferred with Senator Johnson. I have not had an opportunity to talk to you personally on the matter, or to Senator Barkley, but I have had the opportunity of talking to Senator Johnson on his bill for an hour or so. We are thoroughly in sympathy with the purposes of these three bills, as far as they go.

We think, Mr. Chairman, that they are only stop gaps at the best, that they are only palliatives; that even at their best, and with your provision about the use of prison-made goods, in the Hawes bill, and two or three others that have been sustained by the Court, only about one-fourth of any of these goods manufactured or produced, whether in the beet fields, the turpentine swamps, the mills, factories, or munitions plants will ever get into interstate commerce.

The CHAIRMAN. Upon what do you base that? You mentioned the beet fields. Practically all the sugar from the beet fields goes into interstate commerce.

Mr. LOVELL. No it doesn't.

The CHAIRMAN. Have you made any check on that?

Mr. LOVELL. We have.

The CHAIRMAN. Have you made a check to show that the beet sugar produced in Colorado does not get into interstate commerce?

Mr. LOVELL. A very large proportion of what is produced in Colorado; but in some of the States there is considerable of it produced that does not get into interstate commerce.

Senator JOHNSON. May I interject this suggestion: That none of the bills—the Barkley-Clark and Wheeler-Johnson bills—touch beet labor. That is an agricultural pursuit, so that is not the question involved here.

The CHAIRMAN. That is not a question involved here; you are correct about that. No agricultural products are affected by any of these bills.

Senator JOHNSON. That is right.

The CHAIRMAN. There are no agricultural products that are affected, and if you attempted to affect agricultural products, you would have great difficulty.

Is it your idea that a child-labor bill should affect agricultural products?

Mr. LOVELL. I do not know of any reason, Senator, why agriculture should escape.

The CHAIRMAN. Do you think, then, that it should be included?

Mr. LOVELL. Well, that is, perhaps, aside from the question. Personally, yes; but I am not speaking the organization's view on that, because it has not expressed a view on it.

The CHAIRMAN. If you attempted to do that, you would, of course, have great difficulty. After all, if a boy works on a farm or works around the farm, you do not think that that does the boy any harm, do you, even if he is under 16 years of age?

Mr. LOVELL. No.

The CHAIRMAN. If you attempt to include the products of agriculture, you must know that you would never get any legislation through, because every farmer and farm organization in the country would prevent it on the grounds that it would prohibit a child from engaging in harmless tasks on the farm. We are trying to look at this as a practical proposition, one which will do something for the children. We are trying to do something for the children and not simply to do something that some organizations can go out and shout about for 13 more years, beating their breasts and saying how much they are in favor of child labor.

We are trying to give you something of a practical nature that can be passed, that will perhaps not go as far as some of us would

like to see it go, but something which we can uphold as constitutional, that will affect child labor, stop it, and prevent it effectively in the factories, particularly in the sweatshops and southern textile mills.

You do not know of any child labor that is employed in the factories of Massachusetts, do you?

Mr. LOVELL. May I say, Senator, that there is no animosity; in fact, only the kindliest feeling, as far as I and my organization are concerned, toward you, Senator Barkley, and Senator Johnson, as sponsors of this bill. We think that you are thoroughly in earnest and that you are sincere and are trying to do something.

The CHAIRMAN. Thank you, I know it.

Mr. LOVELL. Our records prove it, but we are apprehensive that this legislation—any of it—may be just a sop, a husk of a law, and we say, in substance, that it will nullify the ratification of the child-labor amendment to the Constitution. We are apprehensive, further, because Congress can enact this bill today or at this session and a subsequent Congress can just as readily knock it out.

The CHAIRMAN. That is true of any piece of legislation that has ever been placed upon the statute books. Any Congress that comes here and passes legislation can have their enactments repealed in whole or in part by a subsequent Congress.

Mr. LOVELL. Anything that is not a constitutional amendment.

The CHAIRMAN. But if you have a constitutional amendment, in order to make that amendment effective you have got to have Congress enact legislation to carry it out, do you not?

Mr. LOVELL. We think——

The CHAIRMAN. No, no; answer my question. Is it not true that if the constitutional amendment is adopted it is still necessary to have an act of Congress to make it effective?

Mr. LOVELL. I do not so understand.

The CHAIRMAN. You had better read the amendment, then, because you are not, apparently, familiar with it.

All the amendment does is to give Congress the right to pass legislation. If the constitutional amendment is adopted, Congress in order to carry it out and make it effective, has got to pass legislation. After Congress has passed this subsequent legislation, it can repeal it if it wants to.

But you do not think for a moment that if we ever got upon the statute books of this country legislation prohibiting children from working in factories—children up to 16 years of age—any subsequent Congress would ever repeal it, do you?

Mr. LOVELL. We think they could.

The CHAIRMAN. You think what?

Mr. LOVELL. We think that any Congress could repeal it.

The CHAIRMAN. You say you are worried for fear that if we passed legislation, a subsequent Congress might repeal it.

Mr. LOVELL. That is right—such as these bills.

The CHAIRMAN. On what do you base that? Do you know of any State legislature that has ever passed a law prohibiting child labor but which later repealed it when it was on the statute books?

Mr. LOVELL. No, I do not. I am not really an authority on State legislation.

The CHAIRMAN. You are not familiar with it. Do you know of any Congress that has repealed any law that was passed for the benefit of children or for women working in factories which law has ever been repealed by a subsequent Congress?

Mr. LOVELL. No; I do not know of any, but the courts have taken care to see that they were nullified.

The CHAIRMAN. That is quite true, all right, but you are speaking of Congress.

Mr. LOVELL. That is right.

The CHAIRMAN. A good many people have been beating their breasts for 13 years about this amendment.

Mr. LOVELL. Yes.

The CHAIRMAN. I am one who have favored the child-labor amendment, and I have spoken for it all over my State and in many of the other States.

Mr. LOVELL. That is right.

The CHAIRMAN. But it seems to me that after 13 years we ought to try out something new, something that is really immediately effective, instead of trying to talk about it.

Mr. LOVELL. I am perfectly willing, but, Senator, if you pass this bill, any one of the three, or a combination of the three, you have got to run the gauntlet of the United States Supreme Court. Have we any assurance—can you give us any assurance—that the Supreme Court will not do what they did with the original bill as amended?

The CHAIRMAN. No, unfortunately I cannot; and I do not think that if you put six more Justices on the Supreme Court you can have any more assurance either, unless you know what they are going to decide before you get them up there. And I do not think anybody should have assurance as to what they are going to do before a law is passed.

Mr. LOVELL. You and I would not argue over that at all.

The CHAIRMAN. No.

Mr. LOVELL. All I have to say, in addition to reaffirming what I have said, is the action of our organization—is that I would not change their stand if I could. The organization still stands. It is a substantial organization. We have consistently worked for the ratification of the child-labor amendment. We are willing to be helpful to support this legislation or such part of it as will close the gap temporarily. It may only be an expedient and at best, perhaps, only a curtailment, to some extent, of the iniquitous abuse and exploitation of child labor in sweatshops.

I should like to take just one minute, if I may, to speak about the farmers.

The CHAIRMAN. All right.

Mr. LOVELL. Many farmers today—and I am a farmer, having been born and reared on a farm, as were my dad before me and my granddad before him—are renting their farms to the big sugar-beet and other corporations, which furnish the labor by bringing in people from Mexico or wherever else they may get them, using them on the farms.

The CHAIRMAN. But the trouble is, Mr. Lovell, that from a practical standpoint, and you have been around Congress long enough to be practical about these matters——

Mr. LOVELL. I have to be; I try to be.

The CHAIRMAN. If you try to pass legislation affecting children employed upon farms, you cannot simply segregate them and say that it is going to apply to the beet-sugar farmer but not apply to the farmer who raises alfalfa or to the farmer who raises cattle, because I do not think you would want to prevent children, even though they were under 18 years of age or 16 years of age, from working on a farm where they would have to work around cattle or sheep or do whatever work children do around a farm. If you do that, you will not get any support for your legislation.

It is much better that the children be out doing some useful work around the farm than it is to have them playing around the streets and getting into mischief. Anybody who has got any sense realizes that that is true.

I have had six children, so I know something about the problems with children, I think, more than some of these people who have never had any children but who want to tell me how my children should be reared. I should much prefer to have my children doing something of a useful nature. I make my children work around the house and upon my place, mowing the lawn and doing other useful work, in order to keep them out of mischief and off the streets of Washington or of my home town, Butte, because it makes better children of them.

Mr. LOVELL. I reared three boys, and I did the same thing, so there is no argument there.

We are intensely practical, as railroad men——

The CHAIRMAN. What we are interested in is keeping the children out of these factories.

Mr. LOVELL. That is right.

The CHAIRMAN. We want to keep them out of the factories where they are being exploited and are in competition with men and in competition with women who need work.

Mr. LOVELL. That is right.

The CHAIRMAN. That is what we ought to do, and that is as far as we ought to go; and for purposes of interstate commerce the Barkley bill or the Wheeler-Johnson bill will do that.

In my judgment, there is a very great likelihood that the Supreme Court again would hold the Barkley bill unconstitutional. In other words, you are putting up to them practically the identical bill with the identical features that they have already declared unconstitutional.

I am perfectly willing to do that, but, in addition, there ought to be other provisions in there, so that, if they hold that much unconstitutional, you will still have another provision which will stop them from shipping goods produced by children into States that have child-labor laws.

Most of the large industrial States of the North have child-labor laws that are effective; and, if they do not have them now, the pressure in those States will be such that they will be enacted.

Mr. LOVELL. Thank you, Mr. Chairman.

Senator JOHNSON. Mr. Chairman, Mr. E. J. Manion, of the Order of Railroad Telegraphers, desires to make a short statement.

The CHAIRMAN. We will be glad to hear from Mr. Manion.

STATEMENT OF E. J. MANION, PRESIDENT, ORDER OF RAILROAD TELEGRAPHERS, ST. LOUIS, MO.

Mr. MANION. My name is E. J. Manion. I am president of the Order of Railroad Telegraphers, St. Louis, Mo. I am representing our organization, which has a membership of 50,000. Our organization in convention assembled at New Orleans a year ago endorsed the child-labor amendment or any other child-labor legislation which would have for its object the taking of children out of the factories.

I have read these bills, and I am very favorably impressed with them. I think that the Wheeler-Johnson bill is a very splendid bill, and its objective, of course, is most worthy.

The Barkley bill I have not had an opportunity to analyze to any great extent, but knowing Senator Barkley as I do, and knowing of his interest in the welfare of the people of the country, I know that he intends that the legislation which he proposes shall be for the benefit of the children.

The CHAIRMAN. There is no question about that. Senator Barkley, Senator Clark, and Senator Johnson are all interested in the one thing, and that is to stop child labor. I am hopeful that before this committee gets through with these bills it will have worked out something that will stop child labor in this country.

Mr. MANION. Mr. Chairman, that is just what I was going to suggest. We concur in that respect, and I am in favor of what you have just stated and hope that the committee will work out a suitable law.

The CHAIRMAN. Thank you. We shall next hear from Senator Nunan, of the New York State Legislature.

STATEMENT OF HON. JOSEPH D. NUNAN, JR., MEMBER OF THE SENATE OF THE STATE OF NEW YORK

Mr. NUNAN. Mr. Chairman, I am speaking for myself as a lawyer of New York City and also as State senator of the State of New York.

As this committee probably knows, the State of New York failed to ratify this year the child-labor amendment. After it was defeated there was introduced in the assembly and in the State senate—in the assembly by Mr. Moffat, in the senate by myself—a bill patterned after the Wheeler-Johnson bill. That bill passed both houses by a big majority and is now pending before the Governor of the State of New York.

Following the passage of the bill there was introduced a resolution memorializing Congress to pass the Wheeler-Johnson bill. That resolution was passed unanimously, both in the assembly and in the senate of the State of New York.

As for myself, I want to go on record as being in favor of the Wheeler-Johnson bill.

The CHAIRMAN. Thank you.

Unless there is somebody who is anxious to get away and wants to be heard now, we shall recess this meeting subject to call. Everybody who wants to be heard should register his name with the secretary of the committee. If you have not done so already, please give

him your name and address now, so that we can notify you when the next meeting will be.

I may say that I want to hold it at as early a date as possible, for we want to conclude the hearings. If we are going to get any legislation passed at this session of Congress, it will be necessary to get it out of committee and onto the floor of the Senate at an early date.

There will be no session this afternoon.

(Thereupon, at 12:20 p. m., an adjournment was taken subject to the call of the chairman.)

TO REGULATE THE PRODUCTS OF CHILD LABOR

TUESDAY, MAY 18, 1937

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment on Wednesday, May 12, 1937, in room 412 Senate Office Building, Senator Burton K. Wheeler presiding.

Present: Senators Wheeler (chairman), Wagner, Barkley, Lonergan, Brown of New Hampshire, Johnson of Colorado, Minton, Moore, and Schwartz.

The CHAIRMAN. The committee will please come to order. The executive secretary of the national council, Protestant Episcopal Church in the United States of America, Reverend Pepper, has written me a letter under date of May 17, 1937, in which he states:

> I am informed that when my letter in regard to the Wheeler-Johnson bill was read into the record question was raised by Senator Barkley as to any action taken by the Episcopal Church on the child-labor amendment. To complete the record on this point I write now to state that the Protestant Episcopal Church has taken no action in opposition to the child-labor amendment.

Miss Lenroot, will you please come around to the committee table and take a seat opposite the committee reporter?

STATEMENT OF MISS KATHARINE F. LENROOT, CHIEF, CHILDREN'S BUREAU, DEPARTMENT OF LABOR, WASHINGTON, D. C.

The CHAIRMAN. Just state your name and the position you occupy.

Miss LENROOT. Katharine F. Lenroot, chief, Children's Bureau, United States Department of Labor.

The CHAIRMAN. I believe you have a statement you wanted to make to the committee?

Miss LENROOT. Yes; a very brief statement.

The CHAIRMAN. You may proceed.

Miss LENROOT. Of course, Mr. Chairman and gentlemen of the committee, I am very deeply interested in the proposals pending before this committee for developing some method of Federal regulation of child labor.

Mr. Keating at the last hearing of the committee gave a very excellent summary of the history of attempts to provide a method of Federal cooperation with the States in setting up uniform minimum standards.

I think the record ought to refer also to the demonstration under the N. R. A. of the way in which the 16-year standard, with special

provision for protection against hazardous occupations up to the age of 18, was accepted with very great approval, and——

The CHAIRMAN (interposing). Up to the age of 18, did you say?

Miss LENROOT. Yes; for hazardous occupations. Most of the codes had a special provision up to 18 for hazardous occupations. And, of course, that experience was invaluable for future planning, I mean as to the feasibility of such standards.

The CHAIRMAN. Would there be any difficulty in determining what hazardous occupations would be under the law? The question has been raised as to whether or not these be difficulties in that regard. I am just asking for information, you understand.

Miss LENROOT. Yes; I understand.

The CHAIRMAN. Would there not be a question as to what was a hazardous occupation, unless you specified them?

Miss LENROOT. Under the N. R. A. codes there were lists of hazardous occupations worked out on the basis of information concerning risk, rates, and so forth. In order to develop protection against hazardous occupations, in a law one has to do one or the other of two things—specify certain occupations directly in the law, or give to some administrative official the power to determine what constitutes hazardous occupations. The latter method would make it possible to extend protection to children on the basis of developing experience.

The CHAIRMAN. I am seeking information, and thought perhaps you might have looked into it, while I have not. Might there not be a question as to whether or not you could delegate the power to some bureau for the determination of what constituted and what did not, a hazardous occupation?

Miss LENROOT. Exactly, and——

The CHAIRMAN (interposing). I question very seriously as to whether or not you could do it as a matter of law.

Miss LENROOT. I think it would be much better in this attempt to develop a child-labor bill, to pick out a few occupations which we know on the basis of experience constitute the greatest hazards, and specify them directly in the bill; and not attempt to get into the area of delegation of power, which does raise certain constitutional questions.

The CHAIRMAN. When you come to the question of hazardous occupations, for instance, mining generally would be considered a distinctly hazardous occupation, although even in connection with the operations of a mining company there might be a number of employments that would not be hazardous in the slightest degree. If a person went down into a mine, such work would undoubtedly be hazardous. But if the mining company employed people on top of the ground it would not, in certain cases at least, be a hazardous occupation. That is the question with me. And, of course, in working around machinery people would undoubtedly be engaged in hazardous occupations.

Miss LENROOT. Yes, Mr. Chairman.

The CHAIRMAN. And people working in some factory and not around machinery would not be considered engaged in a hazardous occupation, I take it.

Miss LENROOT. We have given some consideration to those questions, and we realize there are those variations. For instance, in attempting to pick out certain establishments in which it is likely the risks are very great, one cannot in law go into all the refinements.

The CHAIRMAN. That is what I thought.

Miss LENROOT. I have some figures which might be helpful to the committee with reference to mining, lumbering, foundries, and, of course, explosives are on the face of them hazardous, the manufacture of explosives.

I might say that the National Safety Council reports for 1935 that mining is surpassed only by the lumbering industry in the frequency of accidents, and that in lumbering the frequency rates for saw and planing mills, while less than for lumbering as a whole, are nearly as high as the rates for mining. Foundries rank fifth from the highest in the list of 30 industries reported by the council. Moreover, these establishments which I have mentioned have both high-frequency rates, that is as to number of accidents, and also high severity rates. Mining has the highest severity rate and lumbering has the next highest.

The CHAIRMAN. In our mines in Butte, Mont., I do not think we have any children employed, unless it would be on top of the ground; but they are not permitted to work anyone in the mines under 18, I think it is. But suppose you were to say there shouldn't be anybody working in mines under 18, then the question might arise, What would be included in the term "mining"? That question, it seems to me, would necessarily come up, for after all working for a mining company in some capacities would be considered mining and yet might not be a hazardous occupation.

Miss LENROOT. I think you would have to draft your language so that the phraseology you use with reference to factories would read "in or about", and with reference to mines, "in."

The CHAIRMAN. I think that might cover it.

Senator JOHNSON of Colorado. Miss Lenroot, are you speaking of commodities produced in factories to go into interstate traffic, or commodities produced only for State use?

Miss LENROOT. Well, I was thinking of the principle back of all this legislation. Of course, I think, as will be pointed out a little later, it is almost impossible to administer a provision which refers to commodities produced and which does not cover employment in an establishment whose products enter into interstate commerce.

The CHAIRMAN. Right there let me ask you this question: I had understood that the prison-made goods law was working out quite satisfactorily. Do you know whether that is true or not?

Miss LENROOT. There has been very little experience along that line for the reason that during the period when the cases were pending in the courts there were general instructions issued to United States attorneys to the effect that the constitutionality of the law was questionable. Therefore, until the recent decision, there was very little effort made to enforce the law. And only a few months have elapsed since the decision upholding the Sumners-Ashurst Act. No administrative machinery has been worked out. Enforcement rests upon court action. There is no inspection machinery or anything of that kind.

Of course, in the matter of the prisons, you have a definite number of them, not more than 130 Federal and State prisons in the country and much less than that number producing for the open market. Moreover, they are public institutions. You can require them to do certain things in regard to the goods they produce, and can easily determine whether they are complying with the law, and, therefore, it becames a very simple matter to know whether or not goods in commerce are made in a prison; whereas it is not as simple to determine whether or not the labor of children in the many thousands of establishments throughout the country has been employed in producing a certain commodity.

The CHAIRMAN. I have a letter from Mr. E. Stagg Whitin, chairman, executive council, National Committee on Prisons and Prison Labor, under date of May 15, 1937, in which he says:

At the suggestion of Mr. Bailey Stortz—

and he is the assistant clerk of the committee—

I am enclosing material in regard to enforcement of the Wheeler child-labor bill, being a statement of the United States Attorney General for the Western District of Michigan, reviewing a case of prison labor enforcement in which the investigation of the case, pleadings, and the final closing of the case took 8 days and resulted in the payment of the fine on the last day.

Then I will skip a paragraph, which is immaterial [reading]:

The National Committee on Prisons and Prison Labor is naturally taking no action in regard to the child-labor problem, but is anxious to have the record clear that the enforcement of laws similar to the Hawes-Cooper and Ashurst-Sumners prison labor bills can be enforced without the resort to an "army of inspectors." It is for this reason that I am authorized to file this by our legislative committee.

Miss LENROOT. I think there will be other witnesses who will discuss administrative problems presented in these various measures that have been proposed. I should be glad to insert in the record some material with reference to trends in child labor since the N. R. A. was declared unconstitutional. The statistics indicate that child labor is still a serious problem in the United States, though great gains have been made over a period of years.

The 1930 census showed nearly 200,000 children between the ages of 10 and 16 years gainfully employed in nonagricultural pursuits. Figures going back to about 1922 collected by the Children's Bureau for a large area indicate that in general the trend in child labor follows the trend in general industrial employment. That is, when the curve goes up for the latter it goes up for child labor, too.

However, during the operation of the N. R. A. codes that trend was, of course, reversed; and while there were increases in general employment, there was a consistent decline in child employment. Although many manufacturers have been sincerely desirous of continuing to observe the 16-year standard, nevertheless the trend has resumed its earlier course since the N. R. A. decision, so that we now find child labor increasing as general industrial employment increases.

Figures for the 12-month period following the invalidation of the N. R. A. showed an increase of 182 percent in the number of children leaving school to go to work over the preceding 12-month period. In 8 States, the District of Columbia, and 102 cities in 21 other States, approximately 18,000 children under 16 left school for work, as compared with 6,500 children under 16 in the preceding 12 months when the N. R. A. codes were in effect.

Now, it is of great significance to determine how far a law based on the use of the commerce power, however it may be worked out as to administrative provisions, will operate in an effort to effectively to eliminate child labor.

Senator MINTON. Miss Lenroot, might I ask you if you can tell us how many States today have laws that would make it illegal to sell in the State products of child labor?

Miss LENROOT. Two States, Missouri and Vermont; and in New York a bill has been passed, but has not yet been approved.

There has been a decided shift in the employment of children between the ages of 14 and 16 years from factories to miscellaneous occupations in trade and service industries, which would not be covered by any of the bills now pending before this committee, and which involve very often employment of children for long hours and at very low wages.

The CHAIRMAN. Let me ask you this question right there: Do you think newsboys should be prohibited from working? I propound that question to you because it has been put up to me.

Miss LENROOT. I think under any powers that I can see that Congress has or that it may be construed to have now, it would be very difficult if not impossible to bring newsboys in.

The CHAIRMAN. But do you think they should be prohibited from such employment?

Miss LENROOT. I think if Congress had broad power to legislate on the subject of child labor it would be desirable to work out some standard which would be somewhat different from factory employment.

Senator MINTON. In other words, you think it is improper to use newsboys on the streets to sell newspapers?

Miss LENROOT. Under a certain age, and under certain conditions; yes. I would make the age somewhat lower than the age for factory employment, however.

Senator JOHNSON of Colorado. But that question is not involved in any bill pending before this committee.

Miss LENROOT. Not as I understand it.

Senator MINTON. I do not suppose you would interfere with the freedom of the press, would you? [Laughter.]

Miss LENROOT. I might say in that connection, we had some very interesting conferences with representatives of the press when the N. R. A. codes were in effect, and I think it might have been possible to work out something if the court decision had not been what it was.

I might say further that the Children's Bureau, in 1936, made some sample studies of child labor in Alabama, Georgia, Indiana, Missouri, New Hampshire, and Massachusetts, covering over 2,000 minors under 18 years of age, of whom 449 were under the age of 16. Children employed in agriculture, domestic service, or industrial home-work were not included. Preliminary findings of that study showed that about three-fourths of the children under 16 were in nonmanufacturing employment, which probably could not be reached by the bills now pending before the committee. Of course, perhaps

not all those engaged in manufacturing could be reached, but all those in the larger establishments could.

For children who were employed in delivery and messenger work, selling, restaurant and laundry work, and so forth, the hours were long. Nearly one-fourth of those under 16 were working 60 hours a week or longer, and only about one-third were working 40 hours or less. Their earnings also were low. The median, that is, the point at which half were above and half below, for those under 16, was slightly over $4, and nearly one-fifth earned less than $2 for a week's work.

The hours were longer and the wages tended to be lower in the nonmanufacturing industries than in the manufacturing industries.

Senator JOHNSON of Colorado. Are you comparing industrial homework with factory work?

Miss LENROOT. No. These figures relate to manufacturing industries as compared with retail selling, restaurant and laundry work, and other types of occupations the products of which would not enter into interstate commerce presumably, or if so only to a slight extent.

The CHAIRMAN. You may proceed with your statement.

Miss LENROOT. The conclusion which I draw from these figures is that child labor protection is very necessary, and that the experience under the N. R. A. indicates that a general 16-year standard, with somewhat higher protection as it may be worked out for those up to 18, is not in advance of what the public is generally ready to accept. I believe that we ought to take advantage of possible openings under recent court decisions to see whether or not a bill could be passed that would reach a part of this child-labor problem. It should be worked out, however, on sound administrative lines, with full recognition that in enacting such legislation we were not by any means meeting the whole of the child-labor problem; and with the idea that interest in the amendment should not be lost, that those who have been interested in the amendment, and who are now interested in seeing what can be done to protect a comparatively small group of children, should not lose sight of the importance of carrying through the amendment to a successful conclusion, that is, to secure ratification by eight more States.

I spoke of public opinion, and want to put in the record the fact that the poll conducted by the Institute of Public Opinion, the so-called Gallup poll, published on May 23, 1936, showed 61 percent of all those voting, and 45 States, in favor of the child-labor amendment; whereas a similar poll published on February 20, 1937, showed 76 percent and all 48 States as in favor of the amendment. I quote these figures, not with special reference to the amendment, but with reference to public opinion in favor of child-labor protection.

This favorable public opinion also is very strongly borne out by the fact that at this session of the Congress there have been some 34 bills introduced in House and Senate either solely relating to child labor or affecting child labor.

The CHAIRMAN. Miss Lenroot, do you know of any groups today opposed to prohibiting child labor?

Miss LENROOT. None that will say openly they are opposed to it.

The CHAIRMAN. I have not been able to find anybody who is opposing it. I have found groups opposed to the amendment on some ground which I think they are wrong about, but nevertheless they

are opposed to the amendment. On the other hand, I was wondering if you knew of any specific groups that were opposed to it at the present time.

Miss LENROOT. Well, of course it is very interesting to note that in periods when Federal legislation is either in operation or being actively agitated, you get advances in State legislation and many groups which say they are in favor of State laws over and against Federal laws. Whereas in periods when you do not have either the operation or we might say the threat of Federal legislation, we do not find nearly as great activity in attempts to provide protection through State laws. I think the sincerity of some groups that say they are in favor of State regulation is really open to challenge.

The CHAIRMAN. Oh, yes; that is not only true with reference to child labor but is true in reference to everything else. When you propose legislation on a national scale people will say, "We want State regulation."

Miss LENROOT. Exactly.

The CHAIRMAN. And when you say you want State regulation, they say they want national legislation and regulation.

Miss LENROOT. Exactly.

Senator SCHWARTZ. They attempt to meet it by proposing something else.

Miss LENROOT. Yes.

Senator MOORE. Did you include New Jersey in the matter of employment of child labor in factories?

Miss LENROOT. Yes; in figures relating to children receiving employment certificates permitting them to leave school and go to work.

Senator MOORE. Can you give me the names of the factories?

Miss LENROOT. I cannot give a detailed break-down now. But I can put into the record a break-down as to the States.

Senator MOORE. Do you mean of factories in New Jersey where there has been the employment fo child labor?

Miss LENROOT. I would have to look up the record.

Senator MOORE. But you do not know of any?

Miss LENROOT. I haven't the detailed information with me.

Senator MOORE. As a matter of fact, it is against the law in New Jersey to employ children in factories.

Miss LENROOT. New Jersey is not one of the States that has adopted the 16-year limit. I am speaking of 14- and 15-year children. There are nine States that have adopted a 16-year limit.

Senator MOORE. Can you give me the name of any factory in New Jersey where children under 16 are employed?

Miss LENROOT. I will have to look up our records in order to find out.

Senator MOORE. The commissioner of labor is very eager to learn some of these things. There are so many generalities that no State can pass a child-labor law against them.

Miss LENROOT. Yes.

Senator MOORE. Covering the ages of children.

Miss LENROOT. Yes.

Senator MOORE. So, after all, a State has it in its power to protect its own children.

148316—37——4

Miss LENROOT. But it cannot protect its manufacturers against competition with products manufactured in other States.

Senator MOORE. It can protect its own children.

Miss LENROOT. To the extent that the legislature enacts legislation. And in reference to that, pressure is often brought to bear on the plea that manufacturers in the State would then be subjected to competition from without the State.

Senator MOORE. That does not effect the fact that the State can protect its own children.

Miss LENROOT. It can protect its own children; yes.

Senator MOORE. What is your name?

Miss LENROOT. Katharine F. Lenroot.

Senator MOORE. And what is your position?

Miss LENROOT. Chief of the Children's Bureau, United States Department of Labor.

Senator MOORE. Will you send me that information?

Miss LENROOT. I can insert the information about the number of children found employed in manufacturing establishments in New Jersey.

Senator MOORE. No manufacturing establishment in New Jersey dares to do that.

Miss LENROOT. I will look up our data.

Senator MOORE. I should like to have the name of any manufacturing establishment in New Jersey that is charged with employing child labor.

Miss LENROOT. What I have been referring to is simply for the area reporting and is not complete.

Senator MOORE. I should like to get that data in order to put it into this record.

Miss LENROOT. All right.

(The material inserted is as follows:)

Statistics collected by the Children's Bureau from the authorities issuing employment certificates permitting children to leave school to go to work do not give names of individual establishments. They do not show total number of children employed, but only children obtaining employment certificates for the first time. The numbers reported for 11 New Jersey cities cooperating in statistical reporting in the calendar year 1936 were as follows:

Children 14 and 15 years of age receiving employment certificates for employment in manufacturing and mechanical occupations in 1936:

Atlantic City	3
Bayonne	—
Camden	4
East Orange	1
Elizabeth	11
Hoboken	36
Irvington	2
Jersey City	104
Newark	107
Paterson	29
Union City	21
Total	318

The United States Census of Occupations for 1930 showed 4,943 children under 16 years of age employed in manufacturing and mechanical industries in New Jersey.[1] No later census data showing number of children employed in New Jersey are available.

[1] U. S. Census 1930, vol. IV, p. 1053.

Senator WAGNER. Isn't this the difficulty of calling upon each State to enact its own legislation to protect children, that there is the constant argument about competition from the outside, competive disparity?

Miss LENROOT. Yes, Senator.

Senator WAGNER. And one of the contentions has been: If we make the age limit too high another State with a lower age limit will be able to compete successfully with our industries.

Miss LENROOT. Yes, Senator Wagner.

Senator WAGNER. So that the much more desirable way to eliminate child labor would be to have a law of universal application?

Miss LENROOT. Yes.

Senator WAGNER. So that all will be treated alike.

Miss LENROOT. Yes.

Senator MOORE. Might I also say: New Jersey is about fourth in manufactures, and New Jersey has a law, as you say, as to 15 years of age. Does not New Jersey also have a law that every child must complete its education before going to work?

Miss LENROOT. Nearly all of the States have compulsory school-attendance laws, and usually a child under 16 cannot go to work without a certificate stating he has completed a certain grade in school, is physically fit, and so forth. New Jersey is not one of the States that has gone beyond 14 for an absolute minimum standard.

Senator MOORE. Above 14?

Miss LENROOT. Yes.

Senator MOORE. But in fact they are not allowed to work in factories at 14.

Miss LENROOT. They would be if they obtained an employment certificate.

Senator MOORE. But the law won't permit them to get it.

The CHAIRMAN. Did you read into the record the names of some of the States that were referred to?

Miss LENROOT. Three States have passed laws, two of which have been approved by the governors, prohibiting the sale of goods produced by child labor. They are Missouri and Vermont. In New York, where a bill has been passed, the governor has not as yet signed the bill.

Senator BARKLEY. What is the age limit in the three States where the production and sale of child-made goods is unlawful?

Miss LENROOT. It varies. In Vermont the minimum age is 14, with 16 specified for mines, quarries, and other hazardous occupations. In Missouri the law prohibits the sale or offering for sale of goods produced by children under 16 as far as factories and so forth are concerned, and under 18 for mining or quarrying. In New York, sale after notice is prohibited under 16. The Vermont law is very complicated. It introduces elements of hours, night work, and so forth. It prohibits the selling, offering, or exposing for sale of products where a child has worked more than 8 hours a day, more than 48 hours a week, or more than 6 days a week, at night, and so forth. The New York bill is simpler. The fact that the standards are so varied in even these three States indicates some of the complications that would result with 48 different standards.

Senator BARKLEY. Does any of these three States require the making of child-made goods so they may be identified after they get into commerce?

Miss LENROOT. No; I think not.

Senator BARKLEY. Have you had any experience, or has the Bureau of Labor had any experience, that would indicate how difficult it would be to follow an article after its first sale by the factory, which is presumed to know whether it used child labor in its production? After a product has gone beyond the factory and gotten into the hands of wholesalers or retailers or merchants or others, whose business it is to distribute products, if there is no ear-marking of such products, have you any experience showing how difficult it would be to enforce a statute which required that a distributor or seller should know it was made by child labor before he could be made amenable to the law?

Miss LENROOT. We have no practical experience on this point because it is a new principle in child-labor legislation.

The CHAIRMAN. In the first place, under the proposed legislation you would require them to mark their goods if they are going to ship them in interstate commerce.

Miss LENROOT. As I understood it, Senator Barkley was talking about the efficacy of State laws on these points.

The CHAIRMAN. All right.

Miss LENROOT. It is an entirely new type of State legislation and there is no provision for effective enforcement within a State. While we have had no direct experience because it is entering into an absolutely untried field so far as State laws are concerned, nevertheless the general experience under child-labor legislation over a long period of years, as will be pointed out by Miss Abbott, who is to follow me, has been that to depend simply on a legislative fiat, with court prosecution, and without building up administrative machinery, is exceedingly difficult. You have to build up administrative provisions for enforcement before you can get effectual enforcement. Of course, to try to follow goods produced in the light of 48 different standards, and in the light of the variety of places and conditions under which they would be offered for sale, would seem to me to be exceedingly difficult.

The CHAIRMAN. Suppose it were the requirement that before a factory could ship goods in interstate commerce, where child labor was used, it had to brand such goods and show that they were produced by child labor, and a railroad is prohibited from carrying goods in interstate commerce unless branded, would there be any difficulty in the enforcement of such provisions?

Miss LENROOT. Well, how would you determine, for instance, if goods were offered for sale in a store here in Washington, whether all those requirements had been complied with?

The CHAIRMAN. One can say that about liquor at the present time, or almost anything else, that you have to assume the somebody is going to be honest. But if the manufacturer has to brand his goods, and if a railroad is prohibited from transporting goods that are not branded, aren't you then protected? In that case the manufacturer would be subject to prosecution if he did not brand goods made by child labor, and the railroad or other person transporting the goods, would be guilty if they or he transported them unbranded.

Miss LENROOT. If he knowingly transports them.

The CHAIRMAN. Yes; if he knowingly transports the goods in interstate commerce, and if they are not properly branded. So, after all, if you prohibit them from going into the State unless they are properly branded, somebody could, if they were properly branded, take the brands off after they got into the State, I presume, the same as they take the brands off liquor and refill the bottles of liquor with poor whisky. But if a man is determined to violate the law, no amount of enforcement can prevent those things from happening, can it?

Miss LENROOT. No; but you can, as has been shown in labor legislation, develop certain methods which concentrate responsibility, in the first place, on the original source, namely, the producer.

The CHAIRMAN. You do that here. In the first place, under this legislation you say to the producer, in the first instance, "If you produce the goods and ship them in interstate commerce, you have to brand those goods and say that they are produced by child labor."

Secondly, you have to say to the person who transports them, "If you transport those goods from the factory where they employ child labor, and they are not properly branded, you are guilty."

I do not care what law you have—and I have been a prosecuting attorney long enough to know that no matter what law you have, unless you have an army to go out and run down every violation, you are going to have violations of law. If the people want to be crooked, they are going to be crooked. You cannot stop every violation of any law.

Miss LENROOT. You can reduce them, but you cannot absolutely eliminate them.

The CHAIRMAN. You cannot eliminate them. Not only that, but you cannot enforce such laws unless you have public sentiment in the community with you. If you had a law saying that they could not produce goods with child labor under 16 years of age, after all, if they want to get around it, they can get around it.

Miss LENROOT. I realize that you cannot have 100 percent compliance, but I think that experience has demonstrated that you can greatly reduce the extent of violations by the development of your administrative machinery. For instance, S. 2226 does not prohibit the shipment of any products without a label indicating whether or not children have been employed. It only makes it a penalty for a carrier knowingly to transport products without a label, when they are the products of child labor.

The CHAIRMAN. Where they are the products of child labor, if a railroad or any other carrier takes those goods and transports them, if they are not properly branded, that carrier is liable.

Senator BARKLEY. How is the knowledge of the child labor that went into the production to be brought home to the railroads? They have no inspectors at those factories. They certainly have not the power that the Government might have to require inspection of the production, so as to know whether child labor went into the production.

The CHAIRMAN. We did exactly the same thing with the Webb-Kenyon Act.

Senator BARKLEY. I understand we did that.

The CHAIRMAN. And, of course, there were some violations, but on the whole it was effective.

Senator BARKLEY. Of course, the Webb-Kenyon Act was an act that made the liquor, after it went into a dry State, subject to the laws of that State.

Senator MINTON. It went further than that; it forbade the uses of interstate transportation.

Senator BARKLEY. Yes.

Senator MINTON. The Wilson Act took away the original-package idea.

Miss LENROOT. Of, course, liquor, on the face of it, can be identified.

Senator BARKLEY. It was easier to identify liquor.

Senator MINTON. It was relatively easier.

Senator BARKLEY. It is much easier to identify liquor than it is to identify the work of a child in an unbranded piece of goods going from one State to another.

The CHAIRMAN. That is the way they enforce the prison-made-goods law; in identically this way. You can say that with reference to prison-made goods they can take the brands off after they get into the State, or you can say that the railroad may not know whether or not the goods are made by prison labor, and they may not know that the factory has any prison labor in there, but, nevertheless, the railroad itself, or the transporter of it, is going to know that. He is going to be very careful about transporting those goods unless he knows that they are properly labeled, from any factory, and he can very easily check up to find out whether or not they have employed child labor in that factory.

Senator BARKLEY. Let me ask you this, Miss Lenroot:

Let us assume that all child-made goods that entered into interstate commerce would be branded. The branding of those goods would only be effective in States where the sale and distribution of them had been prohibited. It would be rather inconsistent to punish a railroad for shipping child-made goods from one State to another, although they were unbranded, if the shipment went into a State where the State itself did not prohibit the sale and distribution of the goods, because, in that case, you would punish the railroad for shipping them into a State that did not prohibit them.

The CHAIRMAN. What difference does it make? After all, you are not seeking to protect the railroad. What you are seeking to do is to prohibit child labor.

Senator BARKLEY. Yes.

The CHAIRMAN. But you say to the railroad—not only to the railroad, but to the busses, or anybody else who ships goods made with child labor in interstate commerce, that they are liable.

Senator BARKLEY. The object of the legislation is to make the goods subject to the laws of the State when they get into the State at all.

The CHAIRMAN. You are mistaken about that. The object of the law is to prohibit child labor.

Senator BARKLEY. You do not prohibit it by providing that they cannot be shipped into a State that prohibits them, unless all the States, or most of them, prohibit such shipment. It has no material effect upon child labor to prohibit the shipment of goods made by children into 3 States which do prohibit the sale of such goods, and leave the other 45, or any number that might not pass legislation, free to do as they please about it.

The CHAIRMAN. How many States have child-labor laws at the present time?

Miss LENROOT. All but one has a general child-labor law, fixing a minimum age; but they do not relate to sale, except in three instances.

Senator JOHNSON. The very point Senator Barkley raises was decided in the *Kentucky Whip & Collar case.* The goods have to be marked whether they go into a State that has any laws on the subject or not, and the Supreme Court held that provision——

Senator BARKLEY. That is true.

Senator JOHNSON. That stopped the shipment of convict-made goods into all States, just as this provision would stop the shipping of child-made goods.

Senator BARKLEY. No. It only provides for the branding. It does not stop the shipping.

Senator JOHNSON. It stops the sale pretty effectively.

Senator BARKLEY. It only stops shipment into States where State laws prohibit the sale of such goods. The branding of goods does not stop the sale, and it does not affect the laws of the States. It simply would punish the railroad for accepting a shipment which was not branded, although the goods, when sent into the State, might be lawfully distributed and sold.

The CHAIRMAN. You prohibit a manufacturer from shipping such goods in interstate commerce unless they are branded. As a practical matter, how many manufacturers, for the sake of employing a few children, are going to go to the trouble of branding all their goods as having been made by child labor? That would brand that manufacturer from one end of the country to the other. Public sentiment all over this country would be against it, and I do not think there is any doubt about it.

Senator BARKLEY. Of course, it might have some moral effect on the practice of the factory that did not want to advertise its goods as child-made, or as prison-made, goods, but, so far as the legal effect is concerned, it would not be much.

The CHAIRMAN. After all, anybody who has had any experience in prosecuting cases under laws of this character, knows that it is the moral effect that is important. We cannot legislate morals into anybody.

Senator BARKLEY. No; but you do not get much moral effect unless you have some legal effect going along with it.

The CHAIRMAN. You have a legal effect going along with it. I would hate to think that was true of the American people, that it would have no moral effect on the American people unless it had a legal effect. I think, as a matter of fact, the legal effect is an infinitesimal part of affecting the morals of the American people. I would hate to think otherwise.

If the morals of the American people are so low that you have to have laws to make them moral, then we are in a pretty low state of society.

Senator BARKLEY. Nothing that I said intimated that I thought that the morals of the American people are so low that you have to

have a law on the subject. The morals of the American people are not brought about by law. The moral element of our people do not have to have a law in order to make them moral, but there is an element in the country that we have to deal with from a legal standpoint in order to protect the moral element from the infraction of the laws which are necessary to protect those who are morally inclined.

Senator MINTON. As the Good Book says, the law was not made for an honest man.

Senator BARKLEY. Yes. I think that these questions we are arguing here can all be threshed out in executive session, which would save the time of the witnesses, if we would let them testify.

Miss LENROOT. Mr. Chairman, I appreciate very much the way in which those interested have tried to find various ways of attacking the problem. I do want to call attention to the fact that we have a basis of successful experience under the first Federal child-labor law, which Miss Abbott administered as head of the child-labor division of the Children's Bureau. Miss Abbott is here and will be glad to make available to the committee, very briefly, the relationships which were developed between the States and the Federal Government, and the efficiency with which it was possible to carry out simple Nationwide standards under the commerce clause.

I feel very strongly that we ought to give a great deal of weight to a method under which we have had experience, and that that would be the first step toward an approach to the problem, rather than going into untried methods which involve difficult administrative problems.

Also, I want to point out that in attempting to combine the two principles you provide requirements, on the one hand, which, if observed, would be a confession of criminal responsibility under another portion of the bill.

The CHAIRMAN. I do not agree with you at all as to that statement. I do not agree that your premise is right. However, you do know, of course, that the Supreme Court held the child-labor law unconstitutional. Now that Mr. Roosevelt will have another appointment on the Supreme Court, by reason of the resignation of Mr. Justice Van Devanter, the Supreme Court may reverse itself.

But, notwithstanding that fact, you are facing, as a practical matter, a decision of the Supreme Court holding the child-labor law unconstitutional. My only thought about the matter was that if you just passed exactly the same type of law, following the same principle, the ordinary course that every lawyer follows with reference to precedent, you would have to say that the chances are that the Supreme Court would find it unconstitutional.

When you face that practical proposition, is it not better to place in the law two provisions, so that if one should be held unconstitutional you would have the other one? If they are both held constitutional, it is not going to interfere with the enforcement of the law in the slightest degree, because the one that would do the job best and would be the most effective would be the one that would be enforced, and one would really be in aid of the other.

Miss LENROOT. Of course, there are two considerations there, Senator. The first would be whether one of the methods proposed, we will say, was going to be effective in operation or whether it might give a false sense of security and be an ineffective means and might delay the development of more effective measures.

The other consideration would be whether one can logically combine two principles which appear to be diverse in one bill.

The CHAIRMAN. They are not diverse at all, Miss Lenroot. If you will just read the bill, you will find that one of them would prohibit child labor entirely; the other one would say to any manufacturer, "If you do ship such goods in interstate commerce, you will have to brand them." There is nothing diverse in those two principles at all.

Miss LENROOT. Except that in branding he would confess that he had violated another section of the law.

The CHAIRMAN. If the Supreme Court upheld both principles, goods not produced by child labor are free to enter the stream of interstate commerce, or the goods produced by child labor would be denied the right to be transported in interstate commerce, so there would be no necessity of branding. Thus there is no inconsistency. I cannot conceive how any lawyer who reads the bill could give you any other opinion upon it at all. I appreciate the fact that some of these young Brain Trusters may be able to figure out a technicality, but I have not been able to.

Miss LENROOT. Miss Abbott, I think, is prepared to testify on the administrative phases.

Senator BARKLEY. Miss Lenroot, may I ask you this question: Can you provide the committee with information, if you do not have it now, as to the exact number of prisons in the country where prison-made goods are made?

Miss LENROOT. Yes; I can provide that information in detail.

Senator BARKLEY. Can you give us also, through the Department of Labor, the number of factories in which child labor is used, in the country, so that we may make some comparisons?

Miss LENROOT. I can give you an estimate.

NUMBER OF PRISON FACTORIES IN THE UNITED STATES

The latest comprehensive information on prison labor in the United States appears in the Bureau of Labor Statistics report on prison labor in the United States, 1932 (Bull. No. 595). According to this report, there were 12 Federal prisons and 116 State prisons in 1932. Some inmates of each of these institutions were employed at productive labor. City and county jails reported relatively little productive work being done by prisoners. In only 13 out of 3,125 cities and counties from which information was secured did the jails report manufacturing operations conducted on an extensive scale. This makes a total of approximately 141 prisons, including penitentiaries and reformatories, where prisoners did productive work in 1932.[1] However, only a small proportion are known to be producing for the open market. At the present time 25 State prison institutions are known by the Prison Industries Reorganization Administration to carry on prison production for open-market sales, according to the latest information available to them. No Federal prison products are sold in the open market. Little current information is available on sales from city and county jails. Only seven jails, however, were reported by the Bureau of Labor Statistics to have products sold in the open market in the year 1932.

[1] U. S. Bureau of Labor Statistics, Prison Labor in the United States, Bull. No. 595, pp. 1, 21, 22, 204–208.

NUMBER OF FACTORIES IN THE UNITED STATES WHICH MAY EMPLOY CHILD LABOR

The only comprehensive figures on numbers of manufacturing establishments and numbers of child workers in the United States are from the United States census reports. The latest period for which comparable figures for both establishments and child workers are available is 19-9-30. The Census of Manufactures reports 210,959 manufacturing establishments in the United States in 1929.[1] The Census of Occupations for 1930 reports 68,266 children under 16 years of age in manufacturing and mechanical industries.[2] The number of factories employing children at that time is not available, although the child workers were reported from widely scattered communities and from every State.

The latest available figures on number of manufacturing establishments in the United States are from the 1935 Census of Manufactures which reports a preliminary total of 168,181 establishments.[3] No figures are available to indicate for that year either the number of children working or the total number of factories employing children under 16.

Senator JOHNSON. When you furnish that information, will you furnish us also information as to your estimate of the number of snoopers and inspectors you would require in your department to properly police every factory in the country?

Senator BARKLEY. I should like to amend that question by striking out the word "snoopers."

Senator JOHNSON. I can accept the amendment.

Miss LENROOT. Do you mean under one principle, or under the other? I can give you exact information as to what was required to enforce the first Federal child-labor law. It was approximately 51 people. It would be impossible for me to forecast what would be needed in the enforcement of the other principle.

Senator JOHNSON. Where you are providing for State inspection, under the Barkley bill, I want to know how many people you think it will take to inspect all the factories in the country, under the Barkley bill, where you do not make use of the information and data available to you under the Social Security Act.

Miss LENROOT. We would cooperate with the State labor departments, and utilize their services to the utmost, as was done under the first Federal child-labor law. Twenty years have passed since then. The State labor departments have been improved and the State laws have been improved.

I have here a statement on the administrative practice and costs under the first Federal child-labor law, which I shall be glad to leave with the committee.

Senator BARKLEY. Have that made a part of the record.

Miss LENROOT. Perhaps the committee would like a brief statement on the types of hazardous employment, which gives a little more detail than I gave in my oral statement about hazardous occupations.

I have some other material which I shall be glad to make available to the members of the committee, including more details about the extent of child labor, the experience under the first child-labor law, and so forth; but I did not want to burden the record with material which was not essential.

Senator LONERGAN. Miss Lenroot, can you tell us the number of children employed in normal times in industry, mines, mercantile establishments, and other places?

[1] U. S. Census of Manufactures, 1929, vol. 2, p. 16.
[2] U. S. Census of Occupations, 1930, vol. 4, p. 86.
[3] U. S. Census of Manufacturing, 1935, preliminary releases.

Miss LENROOT. Of course, Senator, we have the decennial census, which is limited, but which is the most complete statement we have. I have a break-down here for 1930, which I shall be glad to leave with the committee, which shows the distribution by mines, manufacturing, and so forth.

I also have the trends in child labor, based upon employment certificates issued to children. I can furnish some detail with reference to that, if the committee wishes it.

I will go through my papers here and leave them with the clerk before the end of the hearing, and I shall be glad to furnish any further details desired.

(Miss Lenroot submitted the following for inclusion in the record:)

ADMINISTRATIVE PRACTICE AND COSTS UNDER FEDERAL CHILD LABOR ACT OF 1916

The enforcement of the Federal Child Labor Act of 1916 depended on two basic administrative provisions, which are everywhere recognized as fundamental to the proper enforcement of child labor laws. These are (1) a provision for the issuance of some kind of a certificate whereby the age of the child may be determined on the basis of sound documentary proof before he enters upon employment, and (2) provisions for an inspection service, staffed by an adequate number of properly qualified inspectors empowered to obtain all the evidence necessary to obtain such proof of violation of the law as would be required for prosecution.

CERTIFICATES OF AGE

The act of 1916, unlike the child labor laws of the States, did not penalize the employer for not having certificates on file for all children within the prescribed ages in his employ. It did provide, however, that if certificates were procured in good faith by an employer and the children proved to be under the legal age, he was protected against prosecution for shipment of his products in interstate or foreign commerce. Provision for the use of certificates was included in the Federal act because previous State experience had clearly demonstrated that only if no child is employed without a certificate, and if no certificate is issued except upon reliable evidence that the child is legally qualified to work, will the standards of a child-labor law be evenly and uniformly enforced. With a good certificating system, inspection serves as little more than a reenforcement of respect for the certificate by both employer and child. If, however, a certificating system is defective and certificates are issued on inadequate evidence, official approval of the employment of children below the legal age for work is thus sure to be given. This places a very heavy burden on the inspection department, greatly increases the cost of adequate inspection, as under such circumstances the inspector must determine the ages of all children employed, whether with or without certificates. Moreover, the lack of an adequate certificate system giving assurance that a child has met the legal requirements for going to work, makes it difficult, if not impossible, for even the most conscientious employer to employ young persons without danger of violating the law.

Two kinds of certificates were provided for as acceptable under the terms of the Federal act: (1) Those issued by Federal agents under the regulations laid down by the Child-Labor Board; and (2) age or employment certificates, issued under State authority in States designated by the board. To avoid the expense and inconvenience to the child, the employer, and the Government, of a double certificating system it was important that, so far as the State laws and administrative practices made it possible, State certificates should be accepted for the purposes of the Federal act.

Rules and regulations set up for the administration of the Federal act, made detailed provisions with reference to proof of age, the conditions under which the acceptance of State certificates was permissible, etc.

Specialists experienced in the administration of State certificate systems were employed to study procedures in the States where State certificates were accepted and to work with State officials toward the improvement of local procedures where this was necessary. A specially trained staff was assigned to the issuing of Federal certificates of age in States where State certificates were not acceptable.

DESIGNATION OF STATES

When the law became effective the following 39 States and the District of Columbia were designated for a period of 6 months as States in which a certificate issued under State authority should have the same force and effect as Federal certificates: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

At the end of the 6-month period, 13 of the above States were redesignated for a period of 12 months; 22 and the District of Columbia for 6 months; and two (Virginia and West Virginia) for 3 months only. Later it was found necessary to issue Federal certificates in Virginia. In Texas, it had been found necessary before the expiration of the first 6 months to have Federal certificates issued, and local school superintendents or health officials in the principal industrial centers were commissioned for this purpose. In Indiana, the one remaining State of the 39 first designated, the problems of State administration were still being ironed out and the question of State designation was under consideration at the time the law was declared unconstitutional.

ISSUANCE OF FEDERAL CERTIFICATES OF AGE

From the beginning of the enforcement of the law, Federal certificates were issued in four States (Georgia, Mississippi, North Carolina, and South Carolina), because the certificate requirements of their State laws were far below the standards set by the Federal rules and regulations. Later, as stated above, Virginia and Texas were added to this list.[1]

During the 9-month period when Federal certificates of age were issued, 25,330 children applied for certificates in the five States in which Federal certificates were issued by Federal agents. As shown by the following table certificates were issued to 19,696 of these children and were refused for 2,156. The number of refusals cannot be taken as a measure of the thoroughness with which the work was done. Under the regulations set up for the administration of the act applications had to be accompanied by a promise of employment. As a result of explanations as to the requirements on proof of age given by the issuing officers to the superintendents and managers of the mills and factories, superintendents in many towns and villages canvassed the available evidence of age before signing the promise of employment. This reduced greatly the number of applicants who otherwise would have been refused certificates. If it becomes known that statements of age will be carefully investigated, children under the legal age do not apply. Furthermore, it will be noted that the accompanying table shows that almost as large as the number refused was the number (2,041) whose applications were dropped because evidence was not produced in a 3-month period. This number includes, therefore, a very large number of children who had no evidence, or whose evidence, if produced, would have been so unsatisfactory as to cause refusals of certificates.

[1] In 5 States (Idaho, Nevada, New Mexico, South Dakota, and Wyoming) no provision was made for the issuance of certificates. None of these States had laws at that time providing for a certificate system, and it was thought that there was not sufficient demand for child labor in the industries of these States to justify setting up machinery for the issuance of Federal certificates.

TABLE I.—*Children applying for Federal certificates of age and disposition of their application, Sept. 1, 1917, to June 3, 1918, by States*

State	Children applying for certificates	Disposition of applications			
		Certificates issued	Certificates refused	Applications dropped	Applications pending June 3, 1918
Total	25,330	19,696	2,156	2,041	1,437
North Carolina	12,345	9,377	1,097	1,203	668
South Carolina	6,727	5,874	377	340	136
Georgia	3,849	2,897	388	399	165
Virginia	1,935	1,210	228	33	464
Mississippi	474	338	66	66	44

Effort was made to obtain the best possible proof of age for the applicants. Certificates of birth could be obtained for only 0.8 percent of the total number issued Federal certificates in the five States named above, and baptismal certificates, generally recognized as the next best proof of age, could be obtained for only 2.3 percent. Infant baptism was not general in these States. The main reliance had therefore to be placed on records in the possession of the applicants, such as those contained in family Bibles, the genuineness of which could not easily be determined.

In spite of the large amount of work involved, the entire burden of the issuance of Federal certificates at the time the law was declared unconstitutional was being successfully carried by a staff composed of 22 issuing officers and a half dozen clerks.

INSPECTION PROCEDURES

Violation of the Federal Child Labor Act of 1916 consisted in the shipment in interstate or foreign commerce of goods from factories or mines which within 30 days prior to the removal of such goods had employed children in violation of the standards fixed in the act. For successful prosecution under this act, it was therefore necessary to obtain not only (1) conclusive evidence of employment of minors in violation of these standards, as under the usual State child-labor laws, but also (2) evidence of the removal of goods from the establishment where they were made within 30 days after the proven employment of such children and (3) proof of the shipment of such goods in interstate or foreign commerce.

Development of inspection procedures and techniques for obtaining evidence of the employment of minors in violation of child-labor standards had already been worked out successfully under State legislation in some States. The matter of obtaining evidence of removal and shipment presented entirely new problems and many difficulties, yet upon them depended the ability to prosecute under the Federal act. Much thought and care had therefore to be given to developing successful techniques in these phases of the inspection procedure. That these procedures, though difficult to administer, could be enforced, is shown by the number of cases for which evidence upon which prosecutions could be based was obtained during the brief period in which the law was in effect. Although it was the policy of the Federal Government to prosecute only in the case of serious violations, it depended chiefly upon letters of warning to obtain compliance with the law in the case of minor offenses. During the time the law was in operation, prosecutions had been filed in 25 cases and in 63 other cases had been recommended by the legal staff of the Department of Labor.[2] Convictions had been obtained in eight cases, in two of which complaint had been lodged by a State factory inspector.

[2] Action had been postponed in the case of 21 additional cases in which prosecution might have been recommended by the Department of Labor, as they concerned establishments in the Western Judicial District of North Carolina, where an injunction had been granted in August 1917, restraining the United States attorney from enforcing the act.

STATE COOPERATION IN THE ENFORCEMENT OF THE LAW

As in the matter of accepting State age or employment certificates wherever possible, the Federal Government in developing its plans for inspections of establishments under the law counted upon, and received, the cooperation of State labor officials in many States.

From the beginning the Federal enforcing agency recognized that the full value of a national minimum for the protection of children would never be secured except through a genuine working relationship between Federal and State officials. It was believed that every advantage should be taken of the machinery already existing in most State governments for the inspection for violations of State child-labor laws in the types of establishments covered by the Federal act. It was important that needless Federal inspections should be avoided, and that so far as they were made they should result in a strengthening of respect for both State and Federal laws. With a view to the pooling of inspection resources and experience, a conference of State officials was called by the Secretary of Labor several months before the law became effective.

At this conference, attended by officials from 28 States and the District of Columbia, it was unanimously agreed that it would be mutually helpful if State officers authorized to enforce State child-labor laws should be deputized as enforcing officials under the Federal act.[3] Accordingly, all State officials so charged under State statutes were commissioned as Federal inspectors by the Secretary of Labor. The number of States whose officials were thus deputized totaled 41. The commission was given only to the head of the labor department or other State department enforcing the child-labor law. It was not regarded as necessary to deputize all the inspectors in each such department as the authority given to the head of the department made it possible for him to authorize his assistants to inspect for the same purposes.

One Federal inspector was assigned the special duty of cooperating with State officials, and for a short period joint inspections were carried on in some localities. These were useful in acquainting Federal and State inspectors with the methods followed by each and in impressing employers with the fact that Federal and State officials were working together. It was felt, however, that if long continued, joint inspections would be wasteful, as the time of two sets of inspectors was consumed for work which could be done by one. A regular exchange of information was what each needed from the other. Arrangements were accordingly made to send to the State a summary of the findings of its inspectors, as well as all Opinions of General Interest and Announcements of Judgments", which were published from time to time.

In this way, while the Federal enforcing agency reserved the right to make inspections where it seemed desirable (as in States where the legal standards were below those set by the Federal act or where general opposition or indifference to the State law prevented good enforcement), State inspectors served successfully as deputies of the Federal agency in a number of States. The possibility of duplication of effort on the part of State and Federal officials and of friction between the two enforcing agencies was thus reduced to a minimum, and the costs of an effective Federal inspection machinery were found to be remarkably small. (See below.)

Testimony regarding the assistance given the States by the Federal child-labor acts in the enforcement and improvement of their own child-labor standards is contained in numerous reports of State labor officials published during the period after the nullification of the Federal child-labor-tax law which followed it.[4] This testimony was also embodied in resolutions passed by the Association of Governmental Labor Officials of the United States and Canada and at various national conferences on labor legislation attended by labor officials.

COST OF ADMINISTRATION OF THE FEDERAL CHILD LABOR ACT OF 1916

The following statement, which was embodied in the majority report on the proposed child-labor amendment of the Committee on the Judiciary of the House of Representatives, gives the cost of the administration of the first Federal act and the number of persons engaged in its administration:

"It will be remembered that the first Federal child-labor law was passed September 1, 1916, to become effective September 1, 1917. In order that the preliminary work-formulation of rules and regulations, arrangements for issuance of work permits in the State, or acceptance of State permits—should not be delayed, an appropriation of $50,000 was provided in the deficiency act of April 17, 1917, and made immediately available. The appropriation of 1918 carried an additional item of $100,000 for the enforcement of the child-labor act. Of this amount there was expended or obligated during the period up to June 3, 1918, when the law was held unconstitutional, $111,266.89, or $38,733.11 less than the amount appropriated. * * *

"The division which was created in the Children's Bureau to enforce the law and which was known as the Child Labor Law Division had on June 3, 1918, a staff of 51 persons, including a director, an associate director, a law officer, 17 inspectors, 22 certificate-issuing officers, 8 clerks, and 1 messenger."

The personnel requested by the Children's Bureau in the estimates submitted for the fiscal year ending June 30, 1919, totaled 65 persons, of whom 43 were inspectors, assistant inspectors, and issuing officers assigned to field duty. The total appropriation requested was $164,140.

[3] The law provided that power to enter and inspect places of employment covered by the law might be granted to any person duly authorized by the Secretary of Labor.

[4] Under the Federal Child Labor Tax Law, State labor officials were again deputized to assist in the enforcement of the law, being appointed Federal inspectors for the purposes of the act.

TYPES OF HAZARDOUS EMPLOYMENT FOR WHICH A MINIMUM AGE OF 18 YEARS IS SET IN S. 2345

S. 2345 proposes an 18-year age minimum for employment in mines, foundries, saw mills, planing mills, and establishments where explosives are manufactured. The necessity of protection for young workers from employment which presents special hazards to their health or safety has been generally recognized and accepted. Child-labor laws in 43 States have already established higher age limits for employment of minors at dangerous occupations than for general employment; in 17 States substantial prohibitions extend up to 18, in 1 State up to 17, and in 25 up to 16 years of age.

The types of employment for which a minimum age of 18 years is set in S. 2345 have long been recognized as extra-hazardous work. According to the reports of the National Safety Council for the year 1935,[5] mining is surpassed only by the lumbering industry[6] in frequency of accidents. The frequency rate for saw and planing mills, while less than that in the entire lumbering industry, is very nearly as high as in mining. Foundries are not far behind, ranking fifth from the highest in a list of 30 industries reported by the council.

These industries not only involve a high frequency rate of accidents but also a high severity rate. The mining industry far exceeds all other industry groups in severity, having a rate nearly three times as great as its nearest competitor, lumbering[6]; practically 10 days' time is lost on account of mine accidents per 1,000 man-hours' exposure; in saw and planing mills practically 2 days are lost per 1,000 man-hours' exposure; in foundries, 1½ days.

No specific data as to accident rates in the manufacture of explosives are available, but the hazard is only too self-evident. In an explosion in one small Pennsylvania factory employing about 200 persons in the manufacture of fireworks, 10 persons were killed, and of these, 5 were young workers under 18; in addition to those killed, many were seriously injured.

The special hazard of the types of employment for which a minimum age of 18 has been set by S. 2345 has been recognized by State laws and by regulations under the N. R. A. codes. Four States have fixed by law a minimum age of 18 in mines (Arizona, New Jersey, New Mexico, and Wisconsin). In addition, Michigan has fixed an 18-year minimum age by ruling and Pennsylvania has set an 18-year minimum work for underground coal-mine occupations and for hazardous occupations outside mines; a considerable number fix an 18-year minimum for many types of work in foundries, in the lumbering industries, and in the manufacture of explosives. Forty-one of the 166 industries under N. R. A. codes prohibiting hazardous occupations for minors under 18 included foundry

[5] See National Safety Council: Accident Facts, 1936, and Accident Rates in the Wood Working and Lumbering Industries. See also table 1, attached.

[6] Including Logging Operations, Saw and Planing Mills, and Timber Treating (not woodworking) industries.

work in their specific lists of prohibited occupations, 33 of them prohibiting all work in the foundry proper.

The prohibition of work of minors under 18 in all of these employments was recommended by a technical committee of safety engineers, industrial hygienists, and compensation authorities, appointed as a result of the White House conference on child health and protection, which studied this problem and issued its recommendations in 1932.

Facts on Child Labor

(Based on United States Census of 1930)

1. Number of child workers 10 to 15 years (inclusive): 667,118 (4.7 percent, or 1 in every 21 of the children of these ages in the United States).
2. Number of child workers 10 to 13 years (inclusive): 235,328 (2.4 percent, or 1 in every 42 of the children of these ages in the United States).
3. Number of child workers 14 and 15 years: 431,790 (9.2 percent, or 1 in every 11 of the children of these ages in the United States).
4. Occupations of child workers 10 to 15 years (inclusive):

Agriculture	469,497 (70.4 percent of total)
Manufacturing and mechanical industries	68,266 (10.2 percent of total)
Chiefly laborers and semiskilled operatives in—	
Textiles	20,625
Cotton mills	10,631
Silk mills	3,596
Knitting mills	3,497
Clothing industries	8,650
Building	7,380
Lumber and furniture	4,790
Food and allied industries	4,324
Iron and steel and other metals	3,236
Trade	49,615 (7.4 percent of total)
Domestic and personal service	46,145 (7.0 percent of total)
Clerical occupations	16,803 (2.5 percent of total)
Transportation	8,717 (1.3 percent of total)
Extraction of minerals	1,184 (0.2 percent of total)
Other (includes public and professional service, forestry, and fishing)	6,891 (1.0 percent of total)

The Trend of Child Labor 1934–36

Reports of the number of children receiving employment certificates that permit them to leave school for work, sent to the Children's Bureau by State and local officials, show that the upward trend in child employment, which followed immediately on the invalidation of N. R. A. codes in 1935, has continued in 1936.

In the last 7 months of 1935, after the outlawing of the N. R. A. codes, the number of children under 16 years of age leaving school for their first jobs was 53 percent greater than during the entire 12 months of 1934, when the codes were in effect, according to reports of employment certificates issued to children of these ages in various sections of the country. The increase in the number of children leaving school for work in the 12-month period immediately following the N. R. A. codes over the number leaving school for work during 1934, while the 16-year minimum of the codes was in effect, is shown in the following table:

Number of first regular employment certificates issued to children between 14 and 16 years of age going to work in the year 1934 and in the year June 1, 1935, to May 31, 1936

[Preliminary figures]

Comparable area, 8 States, 102 cities in 21 other States, and District of Columbia:	
Number certificates issued Jan. 1, 1934, to Dec. 31, 1934	6,452
Number certificates issued June 1, 1935, to May 31, 1936	18,193
Percent of increase	182

These figures by no means represent the total number of gainfully employed children in the United States but are only an indication of the trend as shown by reports from areas from which information could be obtained. This increase in the use of children is no doubt attributable in part to the increased opportunity for employment in all age groups, but it is most significant that the tendency of child labor to follow the general trend of industrial employment has again appeared, after it had been effectively checked for practically a 2-year period while a Nation-wide minimum-age standard was in operation.

The Chairman. Miss Abbott.

STATEMENT OF MISS GRACE ABBOTT, PROFESSOR OF PUBLIC WELFARE ADMINISTRATION, UNIVERSITY OF CHICAGO

The Chairman. What is your present occupation?

Miss Abott. Professor of public-welfare administration, University of Chicago.

The Chairman. You were for a long time connected with the Department of Labor?

Miss Abbott. Yes; first as administrator of the first Federal child-labor law, and then as Chief of the Children's Bureau.

I want to speak very briefly, Senator Wheeler, if I may, about the experience under the first Federal child-labor law, and also very briefly about experiences in the administration of child-labor laws in general.

We have had, now, something like 100 years' experience in attempts to eliminate and control the evils of child labor. We began with the kind of law you suggest, one that contained a general prohibition without administrative machinery, and left to the prosecuting attorney the prosecution of those who offended against the law. It was a complete failure.

We then had——

The Chairman. What do you mean?

Miss Abbott. I mean, they did not know who were employed. Nobody came in and reported them.

The Chairman. You said a law such as the one I proposed.

Miss Abbott. I mean in the sense that you are just going to leave it to the local machinery to enforce, without inspection or control.

The Chairman. You are entirely wrong about that, Miss Abbott. I do not propose anything of the kind, and I do not know where you got the idea that I did. What I said was that the bill before us provided that the Department should turn it over to the Attorney General, and the Attorney General should prosecute.

Miss Abbott. I mean, there is no administrative machinery really provided in your bill, so I assume you think it is one of that type of law.

The Chairman. Oh, no.

Miss Abbott. At any rate, the laws without administrative machinery did not succeed.

They then paid an informer half of the fine collected, in order to get information; and finally we have evolved a system which we think is most effective in the control of child labor.

The Chairman. In order that I may correct you with reference to that matter, Miss Abbott, under the bill which I introduced you said that there was no provision——

Miss ABBOTT. There is, at the last, a provision saying that the Secretary of Labor shall enforce it.

The CHAIRMAN. The Secretary of Labor shall be charged with the enforcement of the act, and shall be vested with full authority to administer its provisions and to prescribe such rules and regulations as may be necessary to enforce it.

Miss ABBOTT. I am familiar with that, but there is no machinery provided; there is no right of entry, no right of inspection, of either the railroad or the factory.

The CHAIRMAN. Neither is there in most of the laws prescribed by Congress with reference to the Interior Department, but the Interior Department is authorized to make rules and regulations to administer the law.

Miss ABBOTT. And the Secretary of Labor can make rules and regulations giving her the right to enter a factory?

The CHAIRMAN. I do not think there is any doubt about it. The Secretary of Labor makes the rules and regulations to carry out the provisions of the act. The Supreme Court of the United States has held, with reference to constitutional provisions, and in other laws, that when you lay down what the law is, and then prescribe that the Department shall lay down rules and regulations for the enforcement of it, necessarily the law carries with it the power to enforce it.

Miss ABBOTT. Of course, we have a long series of State decisions to the contrary, in which State inspectors were not allowed to enter factories without specific authority, and in which departments of public welfare were not allowed to enter almshouses and institutions without specific authority to enter, even though they were public institutions and they had general supervision.

The CHAIRMAN. Here is a provision to the effect that the Department shall make rules and regulations for the enforcement of the law. If the Department does make rules and regulations for the enforcement of the law, I am assuming that it will make rules and regulations to carry out the provisions of the act; and, if it is necessary, to carry out the provisions of the act, for inspectors to go in and inspect these factories, to see whether or not they are properly labeling, and whether or not they are employing child labor, there can be no question but what it can be done. Anybody who tells you to the contrary is telling you something, in my judgment, that is not correct.

Miss ABBOTT. I was using my own mind there.

Senator BARKLEY. Let us assume, under your enforcement provision, which simply throws upon the Department of Labor the power to enforce it, that they can make regulations providing for the employment of inspectors and the entry of those inspectors into factories.

Assuming that, why is there any objection to putting it in the law?

The CHAIRMAN. I do not think there is any objection. I have no objection, certainly. As a matter of fact, I think you are limiting your bill—Senator Barkley's bill—when you provide that the Labor Department shall make the investigations and turn over the prosecution to the Attorney General's office. You are limiting it, because my experience has been that if the information is not turned over to the Department of Justice by the Department of Labor, the Department of Justice will say, "This was not brought to us by the Department of Labor." The law ought to provide that anybody can bring the information to the attention of the Attorney General. Some of the best information you get does not come from special agents; it comes from individuals who bring it to the United States attorney themselves.

Miss ABBOTT. What is the procedure? They do not want to investigate it, and they turn it over to the Department of Labor to investigate. They get a report that children are employed somewhere, and they turn it over to the Department of Labor for investigation. That is all that means. It is the usual procedure with reference to food and drugs.

The CHAIRMAN. It is not the usual procedure?

Miss ABBOTT. It was what happened in connection with the first Federal child-labor act. If reports were made to United States district attorneys, they sent them to us.

The CHAIRMAN. Of course, Miss Abbott. Anybody who brings a violation of law to the attention of the Department of Justice should have that violation investigated. If the Department of Justice does its duty, it is legally bound to go out and investigate it. They can turn it over to some other department and ask them to investigate it, but I felt that your provision here was too narrow, because you simply said it should be turned over by the Department of Labor, making the Department of Labor practically the sole agency that would turn such matters over to the Department of Justice. That is a mere detail.

Miss ABBOTT. Yes; it is.

The CHAIRMAN. But I think you are limiting it.

Miss ABBOTT. Of course, what you have in mind, what I have in mind, and what Senator Barkley has in mind, is to prevent the employment of children.

The CHAIRMAN. Certainly.

Miss ABBOTT. We are not interested in prosecuting people, fining people, or destroying their goods. What we discovered, after long years of administering child-labor laws, is that if you want to prevent children from being employed, and to reduce the amount of inspection to a minimum, the way to do it is through the work-permit system, so that children are not allowed to leave school until they can legally be employed.

The CHAIRMAN. What is that, again?

Miss ABBOTT. The way in which to enforce a child-labor law is through a work-permit system so that children do not leave school until they can get a legal certificate to work. If a child-labor law provides merely for inspection, an inspector in a State may get to a factory perhaps once a year. A child might be employed for a year before it was discovered. In that case the whole connection with the school has been broken, and the law has not served its purpose. Fining the employer is no answer to what you have done to the child. So that the work-permit and work-certificate system has been developed all over the country.

The CHAIRMAN. I do not understand.

Miss ABBOTT. The child wants to go to work. He gets a promise of work from Mr. A. He goes to the school, in most States; the

school makes an investigation of his age based on his birth certificate or other evidence of age, and issues him a formal work permit.

Many of the States require more than an examination as to age. They require the completion of a certain number of grades in school; they require a physical examination, to show that the boy or girl is fit for the job he is going to do. Then he is armed with this legal certificate. State laws provide that no child may be legally employed unless he has a legal certificate on file in the office of the factory. Under those circumstances inspection becomes merely reenforcement of the certificate system, in order to be sure that they are observing it and in order to check up a little on the administering agencies so far as the certificates are concerned. There has been great progress made in getting these certificates issued.

That is the work-permit system used in the States which is practically identical in all States having such a system, and it has been followed through the years, with continuing emphasis on not breaking the child's school connection until he can be legally employed.

It also is a protection to the employer against employing a child illegally when he does not want to employ children under age. He has an authorized statement that this child is of a certain age. Therefore you enable an employer, who wants to do what he should do, to be protected against accidentally employing children under age. It is not easy to tell whether a child is 14, 15, or 16. You can easily go wrong.

The CHAIRMAN. He is liable.

Miss ABBOTT. He is liable. If he has a certificate for a particular child, legally issued, on file, he is protected even though the child is later found to be under age. If not, he has no certificate for a child later found under age. If he has no certificate for a child, he is liable to make a mistake.

The CHAIRMAN. How do you do it under the Federal law?

Miss ABBOTT. Under the plan of the Federal law—the first child-labor law—and I judge it is contemplated in the Barkley bill—State certificates are accepted for the purpose of the Federal law. If the man has a State certificate on file, showing that the child is of a certain age, he does not become liable in case the child was actually below the minimum age.

If the certificate is illegally issued, it would be canceled in the course of inspection.

The CHAIRMAN. Suppose you had no State law.

Miss ABBOTT. If they have no State laws and do not issue certificates, then I think the Federal Government will have to issue certificates. In the administration of the first Federal child-labor law we issued certificates in Virginia, North Carolina, South Carolina, Georgia, and Mississippi.

Of course, the great advantage——

The CHAIRMAN. Might there not be a very serious question as to whether or not, without a constitutional amendment, the Government had any right to go in and issue such certificates?

Miss ABBOTT. The Federal bill does not say that it is illegal to employ these children without a certificate, as the State laws do; it says that in the event the child is employed, and has a certificate on file, it will be assumed that he is of the age specified.

The CHAIRMAN. I am trying to think aloud. Suppose a State has no State law requiring a certificate. Then, you say, the Federal Government will go in and require a certificate?

Miss ABBOTT. Yes. It issues these certificates to them, Senator Wheeler, only upon the request of the employer. The employer asks you to certify his children. You say to him, "You do not have to have this certificate on file, but if you have it on file you are then protected against accidental mistakes in determining age in connection with the act."

So that the work-permit system is, after all, the crux of the whole thing. At the present time, of course, interstate commerce industries are not the most important ones using child labor. There are more children employed in local industries than there are in interstate-commerce industries, so that, if we want to build up, through a Federal law, protection of children in general, as well as those who would be affected by a Federal law, it is of the greatest importance that you reinforce, and not supplant, the State system, so that you will get generally increased respect for the State certificate and the State method of administration, and the two will work in harmony.

The CHAIRMAN. None of these bills does that.

Miss ABBOTT. Yes; I think your bill definitely undermines and supplants the State system.

The CHAIRMAN. How does it?

Miss ABBOTT. You provide, on page 6, section 6—you do not provide for the acceptance of an employment certificate; you say that any record kept, or document filed, with a government, church, or school authority, becomes prima facie evidence. Now, of course, what you say, in effect, is that something much less than a work certificate is good enough for the Federal Government, whereas all these State administrators have been drilling and drilling as to the necessity of work certificates.

The CHAIRMAN. Do they not have to file all that information under the Social Security Act?

Miss ABBOTT. The Social Security Act calls for the filing of unsupported information as to what a worker's age is. They are not investigating people's ages.

The CHAIRMAN. If the Secretary of Labor——

Miss ABBOTT. It is not likely that they will file an age showing illegal employment, either.

The CHAIRMAN. You say that the Secretary of Labor shall be charged with the enforcement of this act, and shall be vested with full authority to administer its provisions and to prescribe such rules and regulations as may be necessary.

Miss ABBOTT. It is a nice idea that she could, by regulation, wipe out part of the act, and say, "That is not the case."

The CHAIRMAN. That is not a fair statement, and it is not a correct statement, Miss Abbott. If this provision, in your judgment, is not broad enough, we can easily broaden it.

Miss ABBOTT. I would like to see that section changed. It is too broad. All this evidence of age that is submitted as prima facie evidence is too broad.

The CHAIRMAN. If you think it should be broadened, we can very easily broaden that provision so that in both provisions the Secretary of Labor can issue these work certificates.

Miss ABBOTT. Senator Wheeler, I am not suggesting that you are not interested in an effective law; I am only trying to point out what I think is the road to an effective law on the basis of my own experience and the experience in the administration of labor laws in the 48 States and in England.

The CHAIRMAN. I think that I am just as much interested in child labor, and have been for many years, as you or anybody else.

Miss ABBOTT. I have not any doubt about it.

The CHAIRMAN. But when you have a law that has been declared unconstitutional, my only thought about it is—and I repeat—that if you could not get all you wanted, then we ought to do the next best thing, and try to stop this child labor. I think, from a practical standpoint, it will. It will not stop, of course, the manufacture of goods in a State.

Miss ABBOTT. Of course, it is perfectly amazing, as you go about from State to State, to see how different the effectiveness of different State laws is. It is different not only from State to State, but it changes in the same State, when you have a change of governors and a change of interest. You find swarms of children employed under one administration and almost none under the other, with the same moral habits and ideals of the people there.

The CHAIRMAN. Of course. It depends, to a large extent, not on how the law reads but on the kind of enforcement you have in that particular State.

Miss ABBOTT. Yes; of course.

I am very eager to build up the State inspection. I should like to go further than Senator Barkley's bill does, and say, in a clause, that in the administration of this act the Secretary of Labor and the Chief of the Children's Bureau shall, so far as practicable and so far as the State departments desire to cooperate, utilize the State departments of labor, or other State agencies charged with the enforcement of State laws regulating the employment of children.

Senator JOHNSON. We would be glad to have that amendment.

The CHAIRMAN. We will be glad to take it.

Miss ABBOTT. This is in a general letter which I have written. It is a personal letter to somebody, in which I have incorporated that provision. I do not want the whole letter to go in the record. There is nothing secret about the letter, but it does not belong in the record.

The CHAIRMAN. We will put it in the file, so that when we come to consider amendments to the bill we will have this before us.

Miss ABBOTT. I shall be glad to leave it here.

Senator BARKLEY. You might separate this from the letter and insert it in the record.

Miss ABBOTT. There is nothing secret about the letter, except that it does not belong in the record.

(The suggestion was inserted at a later date as follows:)

SUGGESTED AMENDMENT TO BARKLEY CHILD LABOR BILL (S. 2345) PRESENTED BY GRACE ABBOTT AT HEARING OF SENATE INTERSTATE COMMERCE COMMITTEE, MAY 18, 1937

Substitute the following for section 2, subsection (c):

"In the administration of this Act the Secretary of Labor and the Chief of the Children's Bureau shall, so far as practical and so far as the State departments desire to cooperate, utilize the State departments of labor or other State agencies charged with the enforcement of State laws regulating the employment of minors."

Senator MOORE. Mr. Chairman, should not that include the proviso, unless they have complied with the State laws? Otherwise, as this will be suggested, it might be deemed that they had complied with all the law when they had complied with this.

In New Jersey the law is that the commissioner of labor may refuse to let a person of 18 work, if he thinks he is not physically capable, or the employment is such that he should not be engaged in it. Therefore it seems to me that the State laws should be combined in this.

Miss ABBOTT. Of course, we designated the State factory inspectors as agents under the first Federal Child Labor act. That gave them a chance, when they found a violation that was both a violation of the State and of Federal law, to decide under which law they wanted to prosecute. They can say to a manufacturer, "We will prosecute you under the Federal law, which carries a heavier fine and more severe punishment", or "We will prosecute you under the State law." They might be able to establish a much better relationship with the manufacturer than otherwise.

Then there has always been a number of local communities in which it is impossible to enforce child-labor laws, because you cannot get convictions before the local magistrates. In that case they can take them before the Federal courts, if it is a violation of the Federal law, and you have the whole State enforcement machinery working with you. Under the first Federal child-labor laws we never said that we would not go into a State independently, because, after all, the State factory inspector might not have been interested in a case, and we had to reserve the right to go in if we wanted to. But, on the whole, we had an excellent relationship, and it did build up a respect for the State system. That is important not only from the standpoint of an economical method of administering the Federal act, but it also builds up respect for the State departments, on the other side, which is more important, since the number of child workers in intrastate industries is greater than those in industries shipping in interstate commerce.

So, that you can use a Federal law not to supplant and weaken the certificate system, and not to seem to say that something else is as good, but to build up the system and make it just as effective as possible.

So, I think it is very important to contemplate a cooperative relationship between the Federal Government and the State governments in administration.

The CHAIRMAN. I think you are absolutely correct about it, and I think as much burden should be placed upon the State with reference to the enforcement as is possible. You find that the State will pass it over to the Federal Government, and will not in all cases do its duty.

Miss ABBOTT. But we did not get any of that, then, and a small inspection force was able to do a great deal. They do not know where you are, or when you are coming, or anything about it.

The CHAIRMAN. Let me give you an illustration: All through the western country you had State laws prohibiting the sale of intoxi-

cating liquors to Indians. You also had a Federal statute, but you never found the State prosecuting any of those cases. They turned them all over to the Federal Government and the Federal Government had to do the full job. You just simply could not persuade the States to do anything about it.

Miss ABBOTT. If there are no further questions on that certificate system, I want also to speak about branding.

Under the first Federal child-labor law we had a provision that the dealer was protected if he purchased and shipped in interstate commerce, provided he had a guaranty from the manufacturer or producer. Of course, they at once developed the system of stamping all their bills of sale to the effect that no children were employed in violation of the law, so that dealers had that protection.

We never made an inspection and found violations without finding that the manufacturer was giving that guaranty, just as a routine thing.

The CHAIRMAN. That does not apply to this particular instance. Did you make it a violation if the man improperly stamped it?

Miss ABBOTT. Yes; it was a violation if there was a material misstatement of fact.

The CHAIRMAN. Then you could prosecute them.

Miss ABBOTT. Yes; you could; but prosecuting is not what we want to do; we want to prevent the employment of children.

The CHAIRMAN. But, if you bring in a prosecution once or twice, you find that it is a most effective way of stopping violations of the law.

Miss ABBOTT. I agree that you have to have prosecution, as a last resort, but you want to prevent child labor in the first instance.

The CHAIRMAN. If you go in and prosecute any manufacturer in this country for not properly branding his goods—for his failure to state they were produced by child labor, and take him into the Federal court, he just cannot take a chance on it, because it is too costly for him. It will cost him money for lawyers, for the trial, and it will cost him, in many instances, absence from his business and from his home.

Miss ABBOTT. I think prosecution reduces it, but it does not eliminate it. It has not eliminated it in the case of foods and drugs. They are constantly prosecuted. But there is no question that you reduce it.

The CHAIRMAN. There is no possible way, as I said before, to eliminate crooks from this country by the enactment of laws. I do not care what it is.

Miss ABBOTT. Of course, they are not all crooks. All those who are going to violate the law are not crooks.

The CHAIRMAN. They will be crooks—they will be violating the law if they do not brand it and ship it in interstate commerce.

Miss ABBOTT. Yes; but suppose they think they have not any children under 16 years of age employed, and they have?

The CHAIRMAN. All right. If they have, then they are crooked.

Miss ABBOTT. You have not any inspection service; you have not any certificate provisions in your act which would enable employers to be sure. You have said to them that any school record, which is an unsupported statement of the child or parents, or any church record, shall be accepted as prima facie evidence. They are not

really interested in the exact age of the child; why should they be?

Senator JOHNSON. We have also the data and statistics from the Social Security Board.

Miss ABBOTT. Those are not substantiated, either. If I say that I am younger or older than I am, it affects the time of my retirement.

The CHAIRMAN. I think your point is well made, and, if this language is not sufficient——

Miss ABBOTT. I think it is very important that it should be related to the certificate system.

The CHAIRMAN. I think you are absolutely right, and that there should be a provision in there giving the power, if this is not sufficient to do it.

Senator MINTON. Do I understand that you have suggested an amendment whereby this act may be tied into the State certificate system?

Miss ABBOTT. I did suggest that language, but I think it also needs to have a provision about the issuance of work permits, and protection for employers, if they have work permits on file. Then if they try to comply with the terms of the act, and if there is a slip, and actually some child is employed, or a certificate illegally issued, they are protected against prosecution, which seems to be a fair thing to do. It is sometimes quite difficult to establish age.

The CHAIRMAN. You think there should be a provision in this bill giving the department the power to issue these work certificates, do you?

Miss ABBOTT. Yes. But I would say something like this:

"In any such proceeding, if the employer has on file the certificate issued in the form and under the conditions prescribed by the Secretary of Labor, it shall be a protection against prosecution" or some language of that general import.

The CHAIRMAN. I understand. That can be worked out. I think that is a good suggestion.

Miss ABBOTT. Also the provision about tying it up with the State, in which case you do not need an army of inspectors. You need a small group of very competent people to act in cooperation with the States, and to inspect, from time to time, where necessary.

I should also like to say that, of course, I think the prison-labor analogy is not a useful analogy at all. You have many thousands of manufacturing establishments. You have the age of children, difficult of determination. It is not like liquor, which is evident in itself, or like the prisons, which are very limited in number, and where the question of a prisoner's working is not under controversy, because he is in prison. Consequently you can enforce prison-made-good laws under a totally different system from the other.

I do not think the Webb-Kenyon law was so successful, after all.

The CHAIRMAN. I agree with you that it is not the ideal situation. After all, I am simply offering it in connection with the other, so that, if one should be held unconstitutional, the——

Miss ABBOTT. I must say that I object to all this State legislation affecting the free flow of goods. I think it is ridiculous for Missouri, for example, to legislate about what Illinois should send into Missouri. If it is going to be decided, it should be decided by the Government, and not by 48 different standards.

That gets us way back to the days of the old Confederation, instead of in modern times.

The CHAIRMAN. I agree with you. I think that is not only true of child labor but it is true of minimum wages and hours.

Miss ABBOTT. I know there are difficulties.

The CHAIRMAN. What we think about it and what we can do about it are two different things.

Miss ABBOTT. After all, *Hammer* v. *Dagenhart* was one of the most serious mistakes the Supreme Court ever made. It has corrected itself in the *Tipaldo case*, and I think it could correct itself on this.

If you put in a law that is not administratively good, it is worse than no law, because it gives a false sense of security and breaks down the standards of the State laws, which have taken a long time to work out. It therefore is very important that very careful consideration should be given to it.

Senator BARKLEY. You said a while ago that child labor used in the production of goods entering into interstate commerce is not the more important phase, because many more children are working in local institutions than are engaged in the production of interstate goods.

Miss ABBOTT. They are now.

Senator BARKLEY. The amendment which has been submitted, and is pending, having been ratified by 28 States, of course, deals with the whole subject of child labor, local and otherwise.

Miss ABBOTT. Yes.

Senator BARKLEY. Have you any opinion, or would you care to express an opinion, as to whether the present enactment of any legislation on this subject, whether on the prison-made-goods theory or the direct prohibition of interstate commerce, or a combination of the two, would tend to retard the ratification of the amendment by the eight additional States necessary?

Miss ABBOTT. If I thought so, I would not be in favor of any law, because I think we are going to ratify the child-labor amendment. We are on the way toward it, and it seems to me it would be a very great pity to enact any legislation that would retard it. I must say I have a little feeling about the prison-made-goods theory, because that theory has been offered again and again as a method in opposition to the child-labor amendment.

The CHAIRMAN. Who offered it?

Miss ABBOTT. Various people who have appeared in hearings in the States have suggested it. I am not suggesting that you do, or that it is the motive of a large number who are supporting that form now. I know that there are many, especially lawyers, who are intrigued by the analogy, and who are not very familiar with the details of administration of child-labor laws.

The CHAIRMAN. I might say to you, Miss Abbott, for your information——

Miss ABBOTT. I know you have been for the amendment always.

The CHAIRMAN. The person who suggested it to me was one who you would not think for a moment had any ulterior motives at all.

Miss ABBOTT. I have not any doubt about that, because you have been for the amendment right along, and I have not any question about your sincerity in offering it—not the slightest. I only know that we have had Greeks bearing gifts at the State hearings.

Senator LONERGAN. Can you file with this committee within a day or two a statement showing on what basis a certificate is issued by school authorities to children?

Miss ABBOTT. Yes; I shall be very glad to.

(The statement requested was inserted later as follows:)

CONDITIONS UNDER WHICH EMPLOYMENT AND AGE CERTIFICATES ARE ISSUED UNDER STATE CHILD LABOR LAWS

The attached chart summarizes the main legal provisions of the employment certificate systems in effect in the various States, through which State child-labor laws are administered. These certificate systems have proved very effective in the enforcement of child-labor laws and also provide a means whereby an employer may know the age of the child employed by him or be protected in case the child is found to be actually younger. In proving age the law specifies the kind of evidence or proof which may be accepted and also the order in which the officer issuing the certificates shall accept this evidence.

This table indicates that at the present time in a majority of the States administrative machinery is in operation for the issuance of age or employment certificates to minors up to 18 years; in nearly all the other States the machinery exists for the issuance of certificates to children up to 16 which, through cooperative relations, might be extended to cover minors of 16 and 17.

Conditions under which employment and age certificates are issued under State child labor laws

State	Ages between which employment or age certificates are required	Evidence required to be submitted as proof of age and order in which required for employment or age certificate	Educational requirement (employment certificates)	Proof of physical fitness (employment certificates)
Alabama	Employment certificates, 14 to 16; age certificates, 16 to 17.	(1) Birth certificate; (2) baptismal certificate; (3) insurance policy (1 year old); (4) Bible record; (5) passport or certificate of arrival; (6) physician's certificate of age accompanied by other evidence as school record or parent's affidavit.	Eighth grade	Physician's certificate required.
Arizona	Employment certificates, 14 to 16.	(1) Birth certificate, baptismal certificate, or other religious record, or passport; (2) parent's affidavit.	Fifth grade	Do.
Arkansas	do	Evidence of age as required by State commissioner of labor (shall comply with proof of age requirements under first Federal child labor law).	Fourth grade	No requirement.
California	Employment certificates, 14 to 18.	Evidence satisfactory to issuing officer such as birth certificate, baptismal certificate, passport, school record, or parent's affidavit.	Eighth grade for child 14, seventh grade for child 15.	Physician's certificate required.
Colorado	Employment certificates, 14 to 16.	(1) Birth certificate, baptismal certificate, last school census, or school record; (2) parent's affidavit.	Ability to read and write English (evening school attendance accepted as substitute).	No requirement.
Connecticut	Employment certificates, 14 to 16; age certificates, 16 to 18.	Evidence as prescribed by State board of education which is as follows: (1) Birth certificate; (2) baptismal certificate or passport; (3) immigration records; (4) parent's affidavit.	Eighth grade	Physician's certificate required.
Delaware	Employment certificates, 14 to 16.	(1) Birth certificate; (2) baptismal certificate; (3) passport; (4) other documentary evidence satisfactory to issuing officer (not parents affidavit); (5) physician' certificate of age accompanied by parent's affidavit.	Eighth grade, with exemptions.	Do.
Florida	Employment certificates, 14 to 16	(1) Birth certificate, baptismal certificate or other religious record, or passport; (2) parent's affidavit.	Literacy and knowledge of arithmetic.	Requirement of physician's certificate optional with issuing officer.
Georgia	Employment certificates, 14 to 16; age certificates 16 to 18.	(1) Birth certificate; (2) baptismal certificate; (3) Bible record or other documentary evidence satisfactory to issuing officer (but not school record or parent's affidavit) such as certificate of arrival in United States (in existence at least 1 year), or life insurance policy (in existence at least 4 years); (4) physician's certificate of age accompanied by parent's affidavit and school record.	Ability to read and write English.	Physician's certificate required.
Idaho	No employment certificate system.			
Illinois	Employment certificates, 14 to 16; age certificates (optional), 16 to 18.	(1) Birth certificate; (2) baptismal certificate; (3) passport; (4) other documentary evidence satisfactory to issuing officer such as Bible record, certificate of arrival in United States, confirmation certificate or life insurance policy (in existence at least 1 year), or if none of these available, school record for at least 2 years; (5) physician's certificate of age from two physicians.	Eighth grade	Do.
Indiana	Employment certificates, 14 to 16; age certificates, 16 to 18.	(1) Birth certificate; (2) baptismal certificate; (3) Bible record or other documentary evidence satisfactory to industrial board, such as certificate of arrival or passport (in existence at least 1 year), life-insurance policy (in existence at least 4 years); (4) physician's certificate of age accompanied by parent's affidavit and school record.	do	Do.
Iowa	Employment certificates, 14 to 16.	(1) Birth certificate; (2) baptismal certificate or passport; (3) school census; (4) physician's certificate of age.	Sixth grade	Do.
Kansas	Employment certificates, 14 to 16.	Evidence of age required by State commissioner of labor and industry (shall comply with proof of age requirements under first Federal child labor law).	Eighth grade	No requirement.
Kentucky	Employment certificates, 14 to 16; age certificates (optional), 16 to 18.	(1) Birth certificate; (2) baptismal certificate; (3) Bible record or other documentary evidence satisfactory to issuing officer (in existence at least 1 year) such as passport, certificate of arrival in United States, or life-insurance policy (but not school record or parent's affidavit); (4) physician's certificate of age accompanied by parent's affidavit and school record.	Eighth grade for child 14, seventh grade for child 15.	Physician's certificate required.
Louisiana	Employment certificates, 14 to 16; age certificates (girls), 16 to 18.	(1) Birth certificate; (2) baptismal certificate; (3) Bible record; (4) passport or certificate of arrival in United States; (5) life-insurance policy in existence for at least 2 years; (6) parent's affidavit.	Sixth grade or 8 years' school attendance in Orleans Parish, elsewhere schooling as required by compulsory education law.	Do.
Maine	Employment certificates, 14 to 16.	(1) Birth certificate, baptismal certificate, or passport; (2) other documentary evidence of age satisfactory to issuing officer and approved by State commissioner of labor.	Eighth grade	Requirement of physician's certificate optional with issuing officer.
Maryland	Employment certificate, 14 to 16.	(1) Birth certificate; (2) baptismal certificate or passport; (3) other documentary evidence satisfactory to issuing officer, which has been in existence for at least 1 year, such as Bible record, certificate of arrival in United States, or life-insurance policy (but not school record or parent's affidavit); (4) physician's certificate of age accompanied by parent's affidavit.	Sixth grade in Baltimore; elsewhere seventh grade.	Physician's certificate required.
Massachusetts	Employment certificates, 14 to 16, educational certificates showing age 16 to 21.	(1) Birth certificate; (2) baptismal certificate; (3) evidence satisfactory to issuing officer, such as passport or immigration record or other official or religious record; (4) school record for at least 2 years; (5) physician's certificate of age accompanied by parent's affidavit.	Sixth grade	Do.
Michigan	Employment certificates, 14 to 18.	(1) Birth certificate, baptismal certificate or other religious record, or passport; (2) physician's certificate of age accompanied by parent's affidavit or other evidence as required by issuing officer.	do	Requirement of physician's certificate optional with issuing officer.
Minnesota	Employment certificates, 14 to 16.	(1) Birth certificate; (2) parent's affidavit	Eighth grade	Physician's certificate required.
Mississippi	No certificate system (employer must obtain parent's affidavit and school record for child under 16 employed).			

Conditions under which employment and age certificates are issued under State child labor laws—Continued

State	Ages between which employment or age certificates are required	Evidence required to be submitted as proof of age and order in which required for employment or age certificate	Educational requirement (employment certificates)	Proof of physical fitness (employment certificates)
Missouri	Employment certificates, 14 to 16; age certificates (optional), 16 to 18.	(1) Birth certificate; (2) baptismal certificate; (3) passport; (4) life insurance policy in existence at least 2 years; (5) other documentary evidence such as Bible record; (6) physician's certificate of age accompanied by school record and parent's affidavit.	Sixth grade	Do.
Montana	Employment certificates, 14 to 16; age certificates, 16 to 18.	Commissioner of Labor and Industry compiles records of ages of children in State from reports of school records made to him by county school superintendents. This record is "official record" of ages of children in State.	Eighth grade with exemptions.	No requirement.
Nebraska	Employment certificates, 14 to 16.	(1) Birth certificate; (2) baptismal certificate or other religious or official record, or passport; (3) parent's affidavit.	Eighth grade; literacy in English and attendance at evening or continuation school.	Requirement of physician's certificate optional with issuing officer.
Nevada	Employment certificates, 14 to 18.	School record	No requirement	No requirement.
New Hampshire	Employment certificates, 14 to 16.	Birth certificate, baptismal certificate, public record or passport.	Literacy in English	Physician's certificate required.
New Jersey	Employment certificates, 14 to 16; age certificates (optional), 16 to 18.	(1) Birth certificate; (2) baptismal certificate or passport; (3) other documentary evidence satisfactory to issuing officer (but not school record or parent's affidavit); (4) physician's certificate of age accompanied by parent's affidavit.	Eighth grade for child 14; sixth grade for child 15.	Do.
New Mexico	Employment certificates, 14 to 16; age certificates (optional), 16 to 18.	Proof of child's age satisfactory to issuing officer	No requirement	Requirement for physician's certificate optional with issuing officer.
New York	Employment certificates, 14 to 18.	(1) Birth or baptismal certificate; (2) passport; (3) other documentary or recorded evidence satisfactory to issuing officer which has been in existence for at least 2 years (but not parents' affidavit).	No requirement (minimum age for work during school hours is 16).	Physician's certificate required.
North Carolina	do	(1) Birth certificate; (2) baptismal certificate; (3) other documentary evidence of age (but not school record or parents' affidavit) satisfactory to issuing officer, such as Bible record, passport, or life-insurance policy; (4) physician's certificate of age, accompanied by parents' affidavit.	No requirement (minimum age for work during school hours is 16).	Do.
North Dakota	Employment certificates, 14 to 16.	(1) Birth certificate; (2) baptismal certificate; (3) documentary evidence satisfactory to State board of administration and which has been in existence at least 1 year, such as Bible record, certificate of arrival in United States, passport, life-insurance policy (in existence at least 4 years), but not school record or parents' affidavit; (4) physician's certificate of age accompanied by school record and parents' affidavit.	Eighth grade or 9 years school attendance.	No requirement.
Ohio	Employment certificates, 14 to 18.	(1) Birth certificate; (2) baptismal certificate or other religious record, or passport; (3) other documentary evidence satisfactory to issuing officer (but not parent's affidavit); (4) physician's certificate of age accompanied by parent's affidavit.	Seventh grade	Physician's certificate required.
Oklahoma	do	(1) Birth certificate; (2) baptismal certificate; (3) Bible record, certificate of confirmation or other church ceremony at least 1 year old, passport, certificate of arrival in United States, insurance policy at least 1 year old; (4) physician's certificate of age from two physicians.	Literacy in English or attendance at school during previous year.	Requirement of physician's certificate optional with issuing officer.
Oregon	do	Birth certificate, baptismal certificate or other religious record, passport, or school record.	Eighth grade	Requirement of physician's certificate optional with issuing officer.
Pennsylvania	do	(1) Birth certificate; (2) baptismal certificates; (3) passport; (4) other documentary evidence (but not school record or parent's affidavit) satisfactory to issuing officer; (5) physician's certificate of age accompanied by parent's affidavit.	No requirement [minimum age for work during school hours is 16].	Physician's certificate required.
Rhode Island	Employment certificates, 14 to 16; age certificates, 16 to 18.	No information	No requirement [minimum age 16 for work during school hours].	No requirement.
South Carolina	New Child Labor Law; not yet available.			
South Dakota	Employment certificates, 14 to 16.	Not stated in law (certificates are issued by local school officials).	Literacy in English or compliance with school attendance law during previous year.	No requirement.
Tennessee	Employment certificates, 14 to 16; age certificates, 16 to 18.	(1) Birth certificate; (2) baptismal certificate; (3) Bible record, certificate of confirmation or other church ceremony in existence for at least 1 year, passport, certificate of arrival in United States, or life-insurance policy in existence for at least 1 year; (4) physician's certificate of age from two physicians.	No requirement	Physician's certificate required.
Texas	No certificate requirement for child over 15, the minimum age for work in factories.			
Utah	Employment certificates 14 to 18.	As required by regulations of industrial commission	Note required (minimum age for work during school hours is 16).	Requirement of physician's certificate optional with issuing officer.
Vermont	Employment certificates 14 to 16.	(1) Birth certificate; (2) baptismal certificate or other religious record; (3) parents affidavit.	Eighth grade	Physician's certificate required.
Virginia	Employment certificates, 14 to 16.	(1) Birth certificate; (2) baptismal certificate; (3) passport or certificate of arrival; (4) Bible record; (5) other documentary evidence satisfactory to issuing officer (but not school record or parent's affidavit); (6) physician's certificate of age accompanied by parent's affidavit and school record.	No requirement	Do.

Conditions under which employment and age certificates are issued under State child labor laws—Continued

State	Ages between which employment or age certificates are required	Evidence required to be submitted as proof of age and order in which required for employment or age certificate	Educational requirement (employment certificates)	Proof of physical fitness (employment certificate)
Washington	Employment certificates, 14 to 18.0	School record (additional proof may be required by issuing officer).	Eighth grade for child 14; no requirement for child 15 or over.	No requirement.
West Virginia	Employment certificates, 14 to 16; age certificates (optional), 16 to 18.	(1) Birth certificate; (2) baptismal certificate; (3) other documentary evidence satisfactory to issuing officer, which has been in existence for at least 1 year, such as Bible record, passport, certificate of arrival in United States, or life-insurance policy, (but not school record or parent's affidavit); (4) physician's certificate of age accompanied by school record.	Sixth grade	Physician's certificate required.
Wisconsin	Employment certificates, 14 to 18.	(1) Birth certificate; (2) baptismal certificate, at least 10 years old; (3) any baptismal certificate; (4) other documentary evidence satisfactory to issuing officer, which has been in existence for at least 1 year, such as Bible record, passport, certificate of arrival in United States, or life-insurance policy, (but not school record or parent's affidavit; (5) physician's certificate of age accompanied by parent's affidavit and school record.	Completion of highest grade in school in district where child lives or is employed required for child under 16.	Do.
Wyoming	No employment-certificate system.			

Senator LONERGAN. As to age and education requirements?

Miss ABBOTT. Yes. They differ. The three general standards we have are age, educational standard, and physical standard.

Senator LONERGAN. Yes.

Miss ABBOTT. They differ somewhat in the different States, but it would not be difficult at all to put in a memorandum showing, in general, those differences.

I have referred to several Southern States in which Federal certificates were issued under the first Federal child-labor law. Therein their child-labor laws are very much better now. After all, North Carolina has a 16-year law now, and the issuance of work permits in those States is very much better. I should hope that the Federal Government would not directly have to issue any, but would only have to help jack up the administration where it was not adequately done.

Senator LONERGAN. It is only through a constitutional amendment that we can deal effectively with this subject.

Miss ABBOTT. I feel so. I think we could do something by a Federal law, but I think we can only effectively operate if we have full authority.

Senator LONERGAN. How many States, in your opinion, would be willing to deal with the subject effectively?

Miss ABBOTT. Of course, we have a variety of legislation. We are having a hearing today in Illinois on the 16-year minimum standard. If the Illinois Manufacturers Association does not come and oppose it, it will be the first time on record that they have not. They certainly did 2 years ago. There are still people who oppose child-labor legislation.

Senator LONERGAN. I am one of the few remaining States' rights Democrats; I believe that this is a question for each State. Nevertheless, the States have neglected to deal with it.

Miss ABBOTT. Adequately.

Senator LONERGAN. How many States do you think have dealt with it effectively?

Miss ABBOTT. You see, it is not only a legislative standard, it is an administrative standard. I have not been over the States in the last few years, so as to know which ones have really effective administrative standards.

Senator LONERGAN. Are you familiar with Connecticut?

Miss ABBOTT. In general.

Senator LONERGAN. Do you not think that Connecticut is doing well with it?

Miss ABBOTT. Yes; I think they are making a very great effort in Connecticut.

Senator LONERGAN. We have before us several different bills: Senator Barkley's bill, the Wheeler-Johnson bill, and the bill by Senator Clark.

Miss ABBOTT. Yes.

Senator LONERGAN. Have you studied all these bills?

Miss ABBOTT. Yes; I have read them all, and the criticisms I have to make are the ones I have been making. If we have a law, and if you are a States' righter, this ought to please you—we ought to build up the administration in conformity with the developing practice in

the States, so that we strengthen them instead of undermining them and supplanting them.

The certificate system to which I referred was in operation at the time that I was administering the first Federal child-labor law. The certificate system in Connecticut was then one of the best in the country. Certificates were issued on a State-wide basis, instead of a local basis, and it was really very effectively done. I suppose that you are still doing as well.

Senator MOORE. The only chance of getting a uniform law would be by an amendment.

Miss ABBOTT. Yes; and, of course, this competition that we have tending to favor the lowest standards is very great. If you get the States released from competition from child-made goods so that they can express what they want to express for the protection of their children, you will get the standards raised by the States themselves.

Senator LONERGAN. Which one of these bills, in your opinion, is the most effective and has the most teeth?

Miss ABBOTT. I think, for the reasons I have stated, in connection with the administration through the work-permit system, and for one or two other reasons, that Senator Barkley's bill is the best basis for administration in cooperation with the States.

I think it is absolutely impossible for the Federal Government to try to have the kind of a staff that means a complete duplication of what the States are already doing.

The CHAIRMAN. They could have it, of course.

Miss ABBOTT. They could have it, but it would be foolish.

The CHAIRMAN. We do a lot of foolish things.

Miss ABBOTT. We try not to, Senator.

Senator BARKLEY. We do not do them knowingly.

Miss ABBOTT. No.

The CHAIRMAN. Yes; they do them knowingly in some of these departments. When you set up a bureau down here, the thing it tries to do is to get larger.

Miss ABBOTT. We turned back $39,000 out of $150,000 the first year in the administration of the Federal child-labor law.

The CHAIRMAN. I have not heard of any departments turning back money in recent years, have you?

Miss ABBOTT. I do not know.

Senator JOHNSON. I have one question that you did not touch upon. How serious is industrial home work? How much of a factor is that in this whole problem?

Miss ABBOTT. Industrial home work is important.

Senator JOHNSON. It is a growing thing, is it not?

Miss ABBOTT. Yes; I think perhaps it is. It is both growing and not growing. As labor organizers, they do something to get rid of home work. We made a study in Chicago about a year ago last autumn, and found a great deal of industrial home work. It was hard to find. It had, so to speak, gone underground, because the families doing it were eager that the relief administrator should not know the pittance they were earning in this way.

But it does, of course, exploit the family. It has introduced not only an element of child labor but a very demoralizing element to family life. It is very unfair competition, because the employer pays less than he pays in a factory, and he does not supply the workshop.

The interstate aspects of industrial home work are very serious. For example, as between New York and New Jersey, home work is shipped in from New York to New Jersey to be done. The New York law has been srengthened more than the New Jersey law. For example, the employer who is actually distributing the work is not in New Jersey, he is across the line in New York. Home work is very hard to control because attempts to reach it through the family are not very effective.

There are children, too, that actually go across the State line, as far as the interstate aspects of child labor are concerned. Ohio has had a 16-year law for something like 16 years. Montana has had one for a long time, also. But down near Wheeling children who could not work in Ohio walk across the bridge and work in West Virginia. Ohio was trying to protect its children, and West Virginia was trying to bid for them. Of course, a Federal law takes care of a thing like that.

The CHAIRMAN. We cannot understand those things, out in the West.

Senator JOHNSON. The Barkley bill, the bill that you rather favor, is entirely silent, and does not touch at all, in any particular, the industrial home work, while the Wheeler-Johnson bill most effectively prohibits industrial home work so far as interstate commerce is concerned.

Miss ABBOTT. I would be glad to see an attempt made to prohibit it.

Senator JOHNSON. We do prohibit it, in section 4.

Miss ABBOTT. Even the States have had difficulty with the prohibition of home work. The courts have decided, after all, that what a man does in his own home is his own business.

Senator JOHNSON. We stop it in section 4, and there is no possible way it can be stopped under the Barkley bill.

Miss ABBOTT. You are likely to run into trouble if you do it as definitely as that.

Senator JOHNSON. We stop it when it goes into interstate traffic.

Miss ABBOTT. The method by which States get at home work is to make it very difficult for the employer to distribute it. The employer has to take out a license, the employee has to take out a license, and there is a good deal of inspection, so that the profit is taken out of the system. In the case of *In re Jacobs*, when New York tried to prohibit cigar making in the homes, it was considered an invasion of a man's castle.

Senator MINTON. The court said that the best place anybody could work was his own home.

Miss ABBOTT. Oh, yes; a lovely place!

Senator JOHNSON. Under our approach we treat it just as the factory-made goods.

Senator MINTON. But, as Miss Abbott points out, there is a very serious legal objection to trying to prohibit labor in the home.

Senator JOHNSON. We stop the shipment of those goods. We do not bother about the home.

Senator MINTON. Then you do not very effectively prohibit child labor in the home.

Senator JOHNSON. So far as interstate commerce is concerned, we do.

Senator BARKLEY. Of course, that is a detail.

Let me ask you this, Miss Abbott: Will not the ultimate adoption of a uniform system throughout the country for child labor, which can only come about under a Federal statute or a Federal amendment, or both, eliminate the competitive situation which exists in States that compete with one another in the sale of their products in commerce generally?

Miss ABBOTT. Yes.

Senator BARKLEY. In other words, if the Legislature of Illinois, we will say, wants to raise the minimum for child labor to 16 years, and Missouri and Indiana have 14 years, we will say, it is perfectly natural for the manufacturers of Illinois to go before the legislature and say, "To raise the age above that of our neighbors means to put us in a competitive situation which would be to our disadvantage." It is a very plausible argument before any legislature, because they do not want to drive their own factories out of business, while fostering those of some other State. So long as you have to depend on independent action on the part of the States, you are bound to have plausible, if not legitimate, arguments before legislatures against the raising of the age limit when the neighboring State does not have that same standard.

Miss ABBOTT. Yes.

Senator BARKLEY. Therefore the only way to correct that is to have a uniform system, which would be fair to everybody in all the States.

Miss ABBOTT. Absolutely; there is no question about it. Of course, if you have a Federal standard for interstate commerce, it does affect the standard for the other, because it helps to make public opinion.

Senator LONERGAN. Take the cotton manufacturers of the North and the South. If they met in convention, could they not agree on the age that should be set by the legislatures of the different States?

Miss ABBOTT. There have been those who have held out great hope of agreement along these lines, without the intervention of the Government, but there are always some employers that will not go along. There are always those who will agree, but they do not come across with the agreement. We have had long experience with the cotton manufacturers on exactly that proposition.

The CHAIRMAN. They moved their factories from Massachusetts and New England down to the Southern States because the inducement of a supply of cheap white labor was held out to them in Georgia, North Carolina, and other Southern States.

Miss ABBOTT. Yes; they even advertised it.

The CHAIRMAN. The chambers of commerce advertised it.

Senator SCHWARTZ. And some of them that would agree in the convention would violate it on the way home.

Miss ABBOTT. Yes.

The CHAIRMAN. Mr. Dinwiddie.

STATEMENT OF COURTENAY DINWIDDIE, GENERAL SECRETARY, NATIONAL CHILD LABOR COMMITTEE, NEW YORK, N. Y.

The CHAIRMAN. Your name is Mr. Courtenay Dinwiddie, is it?

Mr. DINWIDDIE. That is right.

The CHAIRMAN. And you are general secretary of the National Child Labor Committee?

Mr. DINWIDDIE. Correct.

The CHAIRMAN. Your address is 419 Fourth Avenue, New York City?

Mr. DINWIDDIE. That is right.

The CHAIRMAN. How long have you been general secretary of the National Child Labor Committee?

Mr. DINWIDDIE. Since the fall of 1930.

The CHAIRMAN. How many members do you have on that committee?

Mr. DINWIDDIE. Approximately 13,000.

The CHAIRMAN. How do you finance your committee?

Mr. DINWIDDIE. Entirely by voluntary contributions.

The CHAIRMAN. Entirely by voluntary contributions?

Mr. DINWIDDIE. Right.

The CHAIRMAN. What contributions do you get yearly?

Mr. DINWIDDIE. The total amount?

The CHAIRMAN. Yes.

Mr. DINWIDDIE. Roughly, around $55,000 to $70,000 a year.

The CHAIRMAN. How long have you had this organization?

Mr. DINWIDDIE. The organization has been in existence for 33 years now.

The CHAIRMAN. Have you been collecting $70,000 a year for that period of time?

Mr. DINWIDDIE. It has varied a great deal from time to time.

The CHAIRMAN. How much have you been getting lately?

Mr. DINWIDDIE. It has run under that for the last 3 or 4 years.

The CHAIRMAN. Do you get a salary?

Mr. DINWIDDIE. Yes.

The CHAIRMAN. What is your salary?

Mr. DINWIDDIE. My salary at the present time is about $8,200.

The CHAIRMAN. About that. What is it?

Mr. DINWIDDIE. It is a few dollars over that.

The CHAIRMAN. A few dollars over that?

Mr. DINWIDDIE. Yes.

The CHAIRMAN. How long have you received that salary?

Mr. DINWIDDIE. I have received that salary for the last 3 or 4 years.

The CHAIRMAN. Prior to that time what salary did you get?

Mr. DINWIDDIE. I was engaged at a salary of $10,000, but it was reduced.

The CHAIRMAN. How long have you been with this organization?

Mr. DINWIDDIE. Since the fall of 1930.

The CHAIRMAN. So, since you have been connected with this organization, you have received a salary of $8,000 per annum?

Mr. DINWIDDIE. Yes.

The CHAIRMAN. Do you have any other salaries, outside of that?
Mr. DINWIDDIE. No, sir.
The CHAIRMAN. Are there any other salaried persons in connection with your organization?
Mr. DINWIDDIE. Yes.
The CHAIRMAN. What others? Who is the president of your organization?
Mr. DINWIDDIE. Homer Folks.
The CHAIRMAN. Do you have any other persons drawing salaries from your organization?
Mr. DINWIDDIE. Surely.
The CHAIRMAN. Who else?
Mr. DINWIDDIE. Do you want the name of them?
The CHAIRMAN. Yes.
Mr. DINWIDDIE. Mrs. Zimand is the head of our research department.
The CHAIRMAN. What salary does she get?
Mr. DINWIDDIE. I do not know that I can recall all the details. Would you like a statement submitted on it?
The CHAIRMAN. You are general secretary. You ought to know the salaries.
Mr. DINWIDDIE. She gets approximately $4,000.
The CHAIRMAN. Do you have a Miss Folks?
Mr. DINWIDDIE. Mr. Folks does not get any salary.
The CHAIRMAN. Miss Folks—haven't you a daughter of Mr. Folks?
Mr. DINWIDDIE. That is Mrs. Zimand.
The CHAIRMAN. She is the daughter of the president of the organization?
Mr. DINWIDDIE. Yes.
The CHAIRMAN. She gets approximately $4,000 a year?
Mr. DINWIDDIE. Yes.
The CHAIRMAN. Do you have any other persons drawing salaries?
Mr. DINWIDDIE. Mr. Sidel, the head of our legislative department.
The CHAIRMAN. What salary does he get?
Mr. DINWIDDIE. He gets about $3,500 a year.
The CHAIRMAN. Do you have any others getting a salary?
Mr. DINWIDDIE. Mr. Gibbons, who has been with the organization 17 or 18 years.
The CHAIRMAN. What is his salary?
Mr. DINWIDDIE. Approximately $4,000 a year.
The CHAIRMAN. Any others?
Senator MINTON. What does Gibbons do?
Mr. DINWIDDIE. His title is director of investigations. He engages both in investigations and legislative work.
Senator MINTON. What does he investigate?
Mr. DINWIDDIE. Child-labor conditions over the country.
The CHAIRMAN. In addition to his salary he gets traveling expenses?
Mr. DINWIDDIE. Oh, yes.
The CHAIRMAN. And you get traveling expenses?
Mr. DINWIDDIE. When I am in the field, surely.
The CHAIRMAN. Do you have any other employees?

Mr. DINWIDDIE. Yes; we have clerks and assistants in each of those departments.
The CHAIRMAN. How many?
Mr. DINWIDDIE. We have a total, as I recall it, of approximately 15 to 20 employees varying with the pressure of work. I can check and give you the figures, if you would like them, exactly.
The CHAIRMAN. I wish you would file them with the committee.
Mr. DINWIDDIE. Surely.
The CHAIRMAN. You have a statement you want to make?
Mr. DINWIDDIE. Yes.
Senator BARKLEY. What was your occupation before you became general secretary of this organization?
Mr. DINWIDDIE. Immediately before that I was director of the health program of the Commonwealth Fund.
The CHAIRMAN. What is the Commonwealth Fund?
Mr. DINWIDDIE. It is one of the foundations of the country, of which Mr. Edward Harkness is president. Prior to that I was general director of the American Child Health Association, of which Mr. Hoover was president.
The CHAIRMAN. What salary did you get there?
Mr. DINWIDDIE. With the American Child Health Association I got $10,000.
Senator BARKLEY. Your life has been mostly spent, then, in welfare work of various sorts, with particular reference to children?
Mr. DINWIDDIE. For approximately 35 years; yes, sir.
Senator BARKLEY. What is the object of the Child Labor Association, of which you are general secretary?
Mr. DINWIDDIE. Its object is, broadly, to prevent harmful child labor, and help in the proper introduction of children to their work under the best auspices.
The CHAIRMAN. What is that?
Mr. DINWIDDIE. To help in the proper introduction of children to work under the best auspices. The committee is interested in vocational education, for example, and in seeing that the method of health examinations that Miss Abbott spoke of is worked out well, so that the children go to jobs for which they are fitted, and under proper conditions, and similar activities.
The CHAIRMAN. What can you do about that, particularly with your small staff in New York?
Mr. DINWIDDIE. We do not, of course, attempt to do all our work directly. We work with committees and organizations with a civic interest in all the States, and, of course, we have these 13,000 members, many of whom do take an active part in the work, although not all of them, by any means.
The CHAIRMAN. Who are the chief sponsors of your organization?
Mr. DINWIDDIE. We have no chief sponsors.
The CHAIRMAN. How do you raise your money, principally?
Mr. DINWIDDIE. From everybody all over the country.
The CHAIRMAN. What is your largest donation?
Mr. DINWIDDIE. The largest donation, I should say, taking the year 1936 as typical—the largest individual contribution I recall was $1,000.
The CHAIRMAN. And you raised $70,000?

Mr. DINWIDDIE. Right. Most of it in $1, $2, $3, $5, and $10 amounts.

The CHAIRMAN. How do you raise that? I would like to get in on the secret of how to raise this money.

Mr. DINWIDDIE. I wish you could give me a few secrets on it; we need them.

The CHAIRMAN. You do not need them. I am just wondering how you got it.

Senator BARKLEY. How does your salary compare with the salary of the general secretary or general manager of the National Manufacturers Association?

Mr. DINWIDDIE. I do not know, sir; perhaps you could tell me.

Senator JOHNSON. Will the passage of Federal legislation on the subject of child labor interfere in any way with the continuation of your work or affect your salary or your organization?

Mr. DINWIDDIE. I hope it will. That is our object.

Senator JOHNSON. You want to be legislated out of business?

Mr. DINWIDDIE. Yes; if that can be done. I think there will still be some work to be done.

The CHAIRMAN. I do not think it can be done. All right, Mr. Dinwiddie.

Mr. DINWIDDIE. Mr. Chairman, there are a number of things that I should like to say, which have been covered by others, and to spare the time of the committee I shall try to eliminate those and, with your permission, submit a brief a little later.

I should like to make clear in the beginning——

The CHAIRMAN. You wish to submit what?

Mr. DINWIDDIE. A brief.

I should like to make clear in the beginning that we are heartily——

The CHAIRMAN. A brief on the law or a brief with reference to the facts?

Mr. DINWIDDIE. With reference to the whole subject. I think perhaps we will submit a brief on the legal aspects of the legislation under consideration.

The CHAIRMAN. If you are going to submit a legal brief, that is perfectly all right, but if you are going to submit a statement, I would like to have you submit your statement in person, so that we can hear what you have to say.

Mr. DINWIDDIE. I will try to give the gist of its as far as possible. I am simply trying to save your time. If you wish me to go more into detail, I shall be glad to do so.

We agree very heartily with the statements made here today to the effect that the Federal child-labor amendment is essential to control child labor, because, as pointed out, the best estimates would indicate that only about 25 percent of child labor is involved in interstate commerce.

The CHAIRMAN. I have heard that statement. How do you figure that out?

Mr. DINWIDDIE. You cannot figure it out directly from the census. It can only be figured out from samplings taken from the work permits received by the Children's Bureau, and also from such studies as they have made.

The CHAIRMAN. Where is most of the child labor done—in what States?

Mr. DINWIDDIE. What States?

The CHAIRMAN. Yes. For example, Massachusetts has a child-labor law; Connecticut has an effective child-labor law; New York has a child-labor law; and Pennsylvania has a child-labor law.

Mr. DINWIDDIE. Yes.

The CHAIRMAN. And an effective one.

Mr. DINWIDDIE. In Pennsylvania?

The CHAIRMAN. Yes.

Mr. DINWIDDIE. They have not gotten the machinery fully going to meet their new age limit of 16, which was adopted 2 years ago, but they are on the way, and they are attempting to make it work.

The CHAIRMAN. How about New Jersey?

Mr. DINWIDDIE. New Jersey has such a law.

The CHAIRMAN. When you speak of this division of 75 and 25 percent, upon what do you base that?

Mr. DINWIDDIE. I base it upon the samplings of work permits from a number of States. There are only nine States which have a 16-year law, you know.

The CHAIRMAN. These States which I have mentioned are the largest States that have such laws, where most of the child labor would be employed in the large manufacturing cities; is that not true?

Mr. DINWIDDIE. Of course, there is a great deal of child labor that is not engaged in manufacturing. For example, take garages, laundries, hotels, and various things of that sort, if you are speaking of intrastate as well as interstate fields of work.

The CHAIRMAN. Did you include in this statement child labor employed in hotels and garages and things of that kind?

Mr. DINWIDDIE. Those would be covered by the amendment, but not by any pending legislation.

The CHAIRMAN. They would be covered by the amendment, providing Congress saw fit to regulate and control them.

Mr. DINWIDDIE. Yes.

The CHAIRMAN. But only to that extent.

Mr. DINWIDDIE. Only to that extent.

The CHAIRMAN. Are you taking into consideration, in this 75 percent, newspapers as well?

Mr. DINWIDDIE. I was excluding, in that estimate—I should have stated—agricultural and domestic work, and street trades.

The CHAIRMAN. And what?

Mr. DINWIDDIE. And street trades, which would include newspaper work. If you eliminate those, a rough estimate, which is as near as anyone can get, would be that there would be only 25 percent——

The CHAIRMAN. Then it is your idea that the only way that you can effectively control these things you are seeking to control is by a constitutional amendment?

Mr. DINWIDDIE. Right, so far as child labor in intrastate activities is concerned.

The CHAIRMAN. By a Federal constitutional amendment, having Congress, then, enact laws.

Mr. DINWIDDIE. Having Congress, then, enact laws under the constitutional amendment.

The CHAIRMAN. Giving power to say whether or not they shall be regulated in these various ways.

Mr. DINWIDDIE. That is correct.

We want to be realistic, however, and we are anxious for any step we can make that will produce a gain in the direction in which we are going. We believe that the child-labor amendment would be impossible of ratification before 1939. Very few State legislatures meet next year. We believe, therefore, that a Federal law which will stick should be passed at the present time, and we think that recent decisions of the Supreme Court could very easily be interpreted as opening the door to that sort of law.

The CHAIRMAN. What particular decisions?

Mr. DINWIDDIE. I should like to cover that in the legal brief, if you do not mind. I am not a lawyer myself. I should like to mention one during the course of my remarks, a little later, which I do think has a bearing, however.

The character of this legislation, we think, Mr. Chairman, ought to be determined by the facts as to the extent and distribution of child labor, and by the decisions of the Supreme Court.

I should like to bring out some points——

The CHAIRMAN. Before you leave that, how can you determine the percentage of goods that are made by child labor, that go into interstate commerce? For instance, take the State of New York, or take any one of these States. Can you say definitely what percentage of the goods made by child labor in any one of these States is consumed locally and does not find its way into interstate commerce?

Mr. DINWIDDIE. I do not believe anybody on earth could answer that question.

The CHAIRMAN. So that, when you say 75 percent and 25 percent, that is only a guess, is it not?

Mr. DINWIDDIE. It is based upon the knowledge of actual cases taken in samplings of children's work permits and of children found at work.

The CHAIRMAN. How do you mean, taken in samplings?

Mr. DINWIDDIE. That is, children in a factory whose goods are going into interstate commerce would be included among those who were employed in interstate commerce.

The CHAIRMAN. What factories, for instance, do you know of, which sell their goods entirely in intrastate commerce and which goods do not find their way into interstate commerce?

Mr. DINWIDDIE. I think there would be a relatively small proportion of them. The products of most of those who engage in manufacturing are likely, in some way or other, to find their way into interstate commerce.

The CHAIRMAN. That is what I was trying to say. The goods from practically every factory in this country that employs child labor find their way into interstate commerce.

Mr. DINWIDDIE. I am not trying to minimize that problem at all, Mr. Chairman; I think it is a very important one. I am simply trying to point out the size of the problem that would not be touched by interstate commerce at all.

The CHAIRMAN. I am trying to get at what industries, for instance, would not be engaged in interstate commerce.

Mr. DINWIDDIE. You are speaking of manufacturing, now.

The CHAIRMAN. Whether it is manufacturing or otherwise, where they employ child labor.

Mr. DINWIDDIE. I just mentioned hotels, garages, and laundries. Some of the worst abuses, for instance, are in laundries, and stores of various kinds—mostly service industries. That was the point I was trying to make.

The CHAIRMAN. The goods of practically all manufacturers in this country ultimately find their way into interstate commerce, or at least a portion of them.

Mr. DINWIDDIE. There are some small manufacturing concerns whose products do not enter into interstate commerce, but I think the bulk of them would.

Senator LONERGAN. May I ask a question, Mr. Chairman?

The CHAIRMAN. Yes.

Senator LONERGAN. Is not one of the reasons why there has been such a delay in the approval of the proposed amendment by a sufficient number of States the age of 18 rather than 16?

Mr. DINWIDDIE. Well, Senator, you are asking me to interpret the minds of the American people, which is a little difficult to do. I think that is one of the things that has been said against it most strongly.

Senator LONERGAN. It has been argued very generally, has it not?

Mr. DINWIDDIE. Yes; it has been one of the strong arguments used against it.

Personally, I think some of those using the argument have not been quite sincere in using it, but still some have been.

Senator LONERGAN. That is an opinion.

Mr. DINWIDDIE. That is an opinion, and that is all anyone can give you.

Senator LONERGAN. What was the reason that the New York Legislature failed to approve it?

Mr. DINWIDDIE. You are asking me questions of psychology, sir, that would be a little difficult to answer flatly, but I would say that the reason they failed to approve, so far as the record shows, was that the Catholic Church in the State as a whole came out against it.

Senator LONERGAN. Was that as to regulation? Did they use the word "regulation"?

Mr. DINWIDDIE. There were many reasons alleged, and I have no doubt they were advanced with sincerity. I am not questioning anyone's motives, but it would be a long and detailed explanation to answer your question fully. If you want me to go into that, I think it would probably sidetrack us from what we have here.

Senator LONERGAN. Has there been any thought given to the resubmisison of this amendment, with changes?

Mr. DINWIDDIE. We believe that the amendment, as is, is wholly desirable; that it would work none of the injury that has been alleged against it; and that it would be unimaginable that the horrors that some people have suggested could result from it. It would work nothing but good to the children of the country, and, with 28 States having ratified, and only 8 more needed, we do not quite see why we should turn back and start at the beginning again.

Senator MINTON. Was not the age of 18 years selected because it is believed by people who are advised about the matter that there

are certain occupations that even children of 18 years cannot safely be employed in—for instance, the hazardous employments?

I have heard it stated here this morning that in hazardous employments children 18 years of age should not be employed. Therefore, in order that we may legislate with reference to the hazardous employments, we have had to include in that amendment the age of 18 rather than 16.

Mr. DINWIDDIE. You have put your finger exactly on the point. Seventeen States do have laws which deal particularly, with varying degrees of thoroughness, with that problem. There are, however, a great many States that do not, and it was estimated that in a year of normal employment—and this is based upon the actual figures from 16 States which keep their records so that you can use them—50,000 children were killed or injured in industry, under the age of 18, because of exposure to hazards in industry, and 2,500 of those were permanently injured or killed.

Shall I proceed, Mr. Chairman?

The CHAIRMAN. Yes; go ahead.

Senator LONERGAN. I want to say to you that I am one of those who believe that the only way you can effectively deal with it is through an amendment.

Mr. DINWIDDIE. I agree with you; but I think we can deal with it partly through such legislation as we have before us, and I should like to give some facts which have a bearing on the form it should take.

I shall not go at length, Mr. Chairman, into the question of the seriousness of the child-labor problem, because Miss Lenroot has done so, and will, I assume, submit additional data upon it. I should just like to call attention to the fact that the very unusual gains which we made during the operation of the industrial codes, with which industry fell in line generally because they were on a uniform basis for the country, we have now begun to lose, and lose in quantity, because of the return to individualistic competition in the use of child labor.

Figures as between the first 5 months of 1936, when the codes were no longer in operation, and the first 5 months of the preceding year, when they were in effect, showed, for the areas which made comparable reports to the Labor Department, 150-percent increase in work permits to 14- and 15-year-old children.

That is serious. A break-down of the figures will show that those children are employed in a great many deleterious occupations.

Here is a point which I think has not been stressed before the committee, but which seems to me extremely important, because I believe it has a direct bearing on the form this legislation should take and the question of its constitutionality: That is the question of the economic injury from child labor. It has been mentioned by several of the witnesses, but has not been stressed. I should like to speak a little more particularly about it. I refer not only to the economic injury to the children and to their families, which has occurred, rather than alleged benefits. It is a myth that child labor really benefits the members of the families of the children. It pulls down the wage scale, brings in very little, and throws adults out of employment.

The harm, however, reaches beyond the families of the children involved, into the States where the goods are shipped. I cannot elaborate on that in detail, but I should like to mention just a few points:

I sat through a great many of the code hearings in Washington. I think it was not denied, but, rather, was admitted by most of the manufacturers who took part in those code hearings, and by all the labor representatives who participated, that the use of cheap child labor was one of the most unfair industrial weapons in cutthroat competition that could be devised.

I am trying to establish the point of this economic injury, Mr. Chairman, to the citizens of other States, because I think it does have an important bearing on the form of the legislation.

Governor Ely, of Massachusetts, in the winter of 1932–33, made several public statements to the effect that the manufacturers of Massachusetts might have to go out of business if they could not prevent the unfair competition of States which used cheap child labor.

The CHAIRMAN. What States are using today cheap child labor?

Mr. DINWIDDIE. Practically every State which has not a proper child-labor law is using cheap child labor.

The CHAIRMAN. What are the States?

Mr. DINWIDDIE. I think I could get at it more quickly by naming those that have good child-labor laws. There are eight, including your own home State, New York, Pennsylvania, Ohio, Connecticut, Rhode Island, Utah, Wisconsin.

The CHAIRMAN. Massachusetts?

Mr. DINWIDDIE. Not a 16-year law. North Carolina has just passed one. There are nine States now, altogether, which have 16-year laws, that operate with a fair degree of effectiveness.

The CHAIRMAN. How many have a 14-year law?

Mr. DINWIDDIE. Most of them have some type of 14-year law, Mr. Chairman, but that statement needs a great deal of detailed explanation, because there are loopholes so wide that you could drive a coach-and-four through a great many of them—children excused on the ground of poverty, on the ground that they are needed at home, and various things of that sort, which nullify the effectiveness of the law.

The CHAIRMAN. Could you not give us a synopsis for the record?

Mr. DINWIDDIE. I should be very happy to do so.

The CHAIRMAN. Of all the States?

Mr. DINWIDDIE. It is very revealing. There are eight States, for example, which, through loopholes in their laws, permit the children to work in factories under the age of 14. That is not generally known to the public.

The CHAIRMAN. I think it would be well to have a complete record, for our record here, of each one of these States, if you can get it up and give it to us.

Mr. DINWIDDIE. I shall be very happy to do so.

Senator LONERGAN. Please include in that statement the age at which children are permitted to work at hazardous employments.

Mr. DINWIDDIE. I shall be very glad to do so.

There are only really 17 which deal with children up to 18 years of age in hazardous employment by any real legislation, and there

are 11 States which do not prohibit children, particularly under 16 years of age, from engaging in hazardous occupations.

It is a very serious situation.

Senator LONERGAN. You will file that information later?

Mr. DINWIDDIE. I shall be glad to do so.

To proceed with this economic argument, I think it would be important for the committee to know this fact: In the year 1933, when the depression was perhaps at the bottom—at least, it certainly was very low—the States were being urged to adopt 16-year laws. It seemed absurd that we should have children under 16 years of age employed when millions of adults were out of work. A number of States were urged to do this, and in only two was it possible to get such legislation. When, however, the codes included general 16-year provisions for children, generally engaged in industry, these same States which had failed or refused to pass 16-year laws accepted, welcomed, those code standards.

In other words, the minute you eliminate unfair competition you get popular support and State enforcement of those standards.

Senator Johnson spoke of the question of industrial home work. I think he has put his finger on an exceedingly important feature of child-labor legislation in which we are very weak. I should like to read a brief excerpt from a report of the Department of Labor on industrial home work. This is from publication no. 234, and this quotation will be found on page 25 [reading]:

> It is doubtful if the manufacturers in any other industry, except perhaps infants' and children's wear, sent as much work to rural communities as the manufacturers of infants' knitted wear sent. A large proportion of the firms in this industry were located in New York City, where the provisions of the State home-work law prohibited work on infants' clothing in tenements. New York manufacturers, therefore, sent their work to small towns and rural districts in order to be free from local restrictions. One firm alone, which employed several thousand home workers, sent work to 600 communities. In one small town in Maine, which has a population of approximately 3,500, it was reported that work was being sent in by mail from 27 New York and Philadelphia firms. A framed sign, listing the names and addresses of several New York manufacturers that gave out such work, hung in the lobby of the only public building in the town.

The CHAIRMAN. Is there not a law prohibiting that in New York?

Mr. DINWIDDIE. No, sir. The law prohibits homework in New York, but not in the sending-out of homework. I do not know of any way it could prohibit that.

The CHAIRMAN. Sending it to other States?

Mr. DINWIDDIE. Yes.

Senator JOHNSON. Our bill stops that.

The CHAIRMAN. If they had to brand those goods before they could be shipped back into the State of New York, the New York law would prevent that.

Mr. DINWIDDIE. If they did brand them.

The CHAIRMAN. They would have to brand them before they could ship them in interstate commerce.

Senator MINTON. Suppose they did have to brand them: There is not anything in any law, except in two States, that would prevent them from branding them, and letting them be sold.

The CHAIRMAN. Oh, I believe there is.

Senator MINTON. Then Miss Lenroot was wrong, because she said there were two States—Vermont and Missouri.

Mr. DINWIDDIE. Three.

Senator MINTON. In New York the Governor has not yet signed the law.

There are two States that have a law that makes it unlawful to sell the products of child labor in those States.

Mr. DINWIDDIE. That is right.

Senator MINTON. They can go ahead and brand these products made by child labor in these forty-odd other States, and ship them all over the United States, except to those three States.

The CHAIRMAN. They would have to be branded.

Senator MINTON. Yes; but what difference does it make?

Senator JOHNSON. Section 4 of our bill absolutely prohibits the shipment of them.

Senator MINTON. Unless they are branded.

Senator JOHNSON. Oh, no; branded or not branded.

Senator MINTON. You go to *Hammer* v. *Dagenhart*——

Mr. DINWIDDIE. I should like to speak more, particularly about that section.

The CHAIRMAN. The Supreme Court, in the *Kentucky Whip & Collar case*, which I have before me, points out the fact that you can prohibit them from being shipped in interstate commerce, even though they are going into a State that does not have such a law.

Mr. DINWIDDIE. Right.

The CHAIRMAN. In other words, section 4 of S. 2226 absolutely prohibits the shipment of these goods in interstate commerce, and it would stop the very thing that Mr. Dinwiddie is complaining about now.

Mr. DINWIDDIE. I am very strongly for such prohibition.

Senator MINTON. Then you get right around to the reversal of *Hammer* v. *Dagenhart*. That is all that *Hammer* v. *Dagenhart* decided you could not do. *Hammer* v. *Dagenhart* decided that you could not pass a law, by the Federal Government, prohibiting the shipment in interstate commerce of goods made by child labor. That is all it did decide. Whenever you say that this act permits that thing to be done, you are saying that you can do it notwithstanding *Hammer* v. *Dagenhart*.

Mr. DINWIDDIE. May I disagree from that slightly? My recollection of *Hammer* v. *Dagenhart* is that it said that in the prohibition of the shipment of child-labor-made goods, Congress had not the authority to pass such legislation as would, in effect, control the manufacture of the goods.

Senator MINTON. The Court said that this act which attempted to control the shipment in interstate commerce of goods made by child labor had that effect.

Mr. DINWIDDIE. Yes.

Senator MINTON. And therefore they condemned it, because it had that effect.

Mr. DINWIDDIE. That is right. Your wording is preferable.

The CHAIRMAN. I think you are right about that.

Senator BARKLEY. And they did that notwithstanding the fact that they had previously decided, and have since decided, that if the

goods, within themselves, are deleterious, the Congress might prohibit the shipment in interstate commerce, regardless of the method of manufacture. In that line of decisions, according to my theory, they very effectively amended the commerce clause of the Constitution by making the power of Congress depend upon the character of the goods and not upon the method of their manufacture.

Mr. DINWIDDIE. That is correct.

Senator JOHNSON. That was a 5-to-4 decision.

Senator BARKLEY. A 5-to-4 decision?

Senator JOHNSON. And a very close one.

Senator BARKLEY. It could not have been any closer than 5 to 4.

Senator MINTON. It is as close as 5 is to 4.

Senator SCHWARTZ. We will have 8-to-7 decisions before long, now.

Mr. DINWIDDIE. I think we may take it as established that the injurious effect of goods made by child labor reaches directly into the States where those goods go, and I believe it is accepted by all thoughtful persons who have considered the subject.

Bearing upon that, two or three of you have referred to the *Whip and Collar case*, and *Hammer* v. *Dagenhart*. I should like to read a remark, or a reference, which the Supreme Court made in the *Whip and Collar case*, Mr. Chairman, to which you referred. It quoted with approval from *Brooks* v. *United States*. I will give you the citation, if you like, or hand it to the clerk [reading]:

> Congress can certainly regulate interstate commerce to the extent of forbidding and punishing the use of such commerce as an agency to promote immorality, dishonesty, or the spread of any evil or harm to the people of other States from the State of origin. In doing that it is merely exercising the police power, for the benefit of the public, within the field of interstate commerce.

That is pretty broad language.

Senator MINTON. They were talking about the transportation of a stolen automobile.

Mr. DINWIDDIE. That is correct.

Senator BARKLEY. There is nothing intrinsically deleterious or harmful about an automobile.

Mr. DINWIDDIE. No; there is not.

Senator MINTON. And it does not interfere with the State's rights at all. As the Court said, the vice of the act that was declared unconstitutional in *Hammer* v. *Dagenhart* was that it sought to control the manufacture of goods in the State.

Mr. DINWIDDIE. That is right.

Senator MINTON. Of course, the automobile act does not attempt to prevent the selling of automobiles. It just punishes you if you take a stolen automobile across a State line.

Mr. DINWIDDIE. I see no possible way, Mr. Chairman and members of the committee, of preventing these injurious effects we have spoken of and agreed upon, except through a Federal law, and this point, I believe, needs to be stressed. Such a Federal law is upholding the right of the State to protect its own children, without suffering injurious competition from those States who do not protect their children.

That is a principle we should bear in mind, because I believe it distinctly bears on the constitutionality of the method used.

May I say just a few words about the initiative of individual States? It has, in all ways of dealing with child labor, proved itself ineffective. This has become increasingly clear in the experience we have had in recent years, wherever uniformity was required in order to establish efficacious standards for the country. The very things we have spoken of in connection with the wide variations in the laws of the 48 States support that contention. There are 48 different child-labor laws for the States of the Union, and some of them are exceedingly deficient.

Furthermore, when you attempt to raise the standard of laws in a State which wants better laws, generally speaking, you meet the plea, "This will put us at an unfair disadvantage compared with other States." There are only nine States, as I have mentioned, that have 16-year laws. The States that have acted in 1937, as has been mentioned once or twice here, on the principle of prison-made-goods legislation, have been three: Vermont, Missouri, and New York.

Those three States, the first three, would presumably be under especial pressure to set uniform standards. Here you are driving toward a method of national control which depends directly upon uniformity in the States operating under Federal law. Instead of that you have these three differing: New York has a flat provision of 16 years——

The CHAIRMAN. I notice, in reading the *Kentucky Whip & Collar case*, that the Supreme Court used this language:

> On the same general principle the Congress may prevent interstate transportation from being used to bring into a State articles the traffic in which the State has constitutional authority to forbid and has forbidden in internal commerce.

If they followed that general policy, and it was shown, for instance, that the State of New York had prohibited such practices, and they shipped it out for that purpose, and then shipped it back again, it seems to me that would clearly come under the general principles which were laid down by the Supreme Court.

Senator MINTON. In other words, you think New York should prevent its citizens from shipping the goods out and having the labor performed on them outside, and then having them shipped back?

The CHAIRMAN. Yes.

Mr. DINWIDDIE. It is almost an insuperable job ever to find out where goods are going, unless you violate the sanctity of the mails.

The CHAIRMAN. I think, under the interstate-commerce clause, you could prohibit them from being shipped into the State.

Mr. DINWIDDIE. It is pretty difficult and a very involved thing to prove.

The CHAIRMAN. That the goods are being shipped back?

Mr. DINWIDDIE. That the goods are being sent out to be worked upon by child labor. Ostensibly, they are not. The contract is with the parents. They are shipped back, ostensibly made up by adults. The shipper can claim that he had no knowledge whatever of child labor, and believes no child labor was used.

The CHAIRMAN. How could you prevent it at all if you could not prevent it in that way?

Mr. DINWIDDIE. You can prevent it if it is illegal to ship them in interstate commerce.

148316—37——7

The CHAIRMAN. That is what I said.

Mr. DINWIDDIE. Then the Federal Government steps in and can watch the shipments that come from that factory, which is a different point.

The CHAIRMAN. That is what I said.

Mr. DINWIDDIE. I did not understand your point; I am sorry.

The CHAIRMAN. So that if the Supreme Court upheld section 4 of the Johnson bill, they could absolutely prevent them from being shipped in.

Mr. DINWIDDIE. If it were implemented, which I think is a very important point, which I should like to speak of in a moment.

The nullification of the first and second child-labor laws furnished the most concrete and striking possible picture of the difference between leaving this wholly to the action and initiative of the individual States, and a uniform standard, enforced, largely, I may say, through the States.

The Children's Bureau made a special study of the conditions prior to and immediately subsequent to the operation of the law, and I will read from its statement on the subject [reading]:

> The immediate effect of the decision of the Supreme Court in States where the State child-labor standards were lower than those imposed by the Federal law was the prompt restoration of the longer working day for children under 16 and an increase in the number of such working children. In addition, in a number of these States there was appreciable increase in the violation of the State laws.

I have talked with a large percentage of the labor administrators of the different States in this country, and I attend an annual conference which they hold each year. I have also had the privilege of looking over their reports in years past. It is almost the uniform testimony of these men that the operation of a uniform Federal standard, administered by them, or by work-permit offices, of whom Miss Abbott spoke, tends to increase respect for the State laws.

The CHAIRMAN. How is that?

Mr. DINWIDDIE. Tends to increase respect for the State laws. The existence of a uniform Federal standard in the background, which they are helping to enforce, increases respect for State laws and State administration, because there can be no claim of unfairness or inequity as between States, or no running across State lines to take advantage of a lower standard on the other side.

The CHAIRMAN. Where they have one law in one State and another in another State, the officials who have the more strict law tend to lessen their activities.

Mr. DINWIDDIE. There is tremendous pressure on them to do so, and there is an attempt by people who think they are being unfairly treated to violate the law, whereas, if they know there is a uniform standard, they do not.

The CHAIRMAN. Here is the other difficulty. The State authorities say, "You have a Federal law. We will let you enforce it under the Federal law", and the local officials pay no attention to it.

Mr. DINWIDDIE. That is only in cases where the popular opinion of the community does not want the legislation enforced.

We have had two Federal child-labor laws, Mr. Chairman. We have had the codes, which were not implemented as strongly as Federal laws. In all these cases you found ready and willing cooperation.

The CHAIRMAN. You did not get many State prosecutions.

Mr. DINWIDDIE. Very few were necessary under the child-labor provisions of the codes.

May I read you an extract——

The CHAIRMAN. My experience has been that where you have a State law and a Federal law, invariably the State authorities tend very much to refuse to prosecute cases. They turn them all over to the Federal Government.

Mr. DINWIDDIE. I know that is not true in this case, and this is the reason—Miss Abbott very clearly stated it; I will not go into it at length—the whole handling of this problem through the Federal child-labor law tended to build up and strengthen the State's enforcement of its own laws, and the weakening of that build-up has been due to the entrance of unfair competition since then. Once you eliminate that, through a uniform, enforceable standard, you get a more effective strengthening of State standards.

This resolution is very significant on that point. This was adopted by the labor commissioners and labor enforcement officials who represented 40 States, at a meeting at Asheville, N. C., on October 5, 1935 [reading]:

> Through the child-labor provisions of the industrial codes great gains were made in raising child-labor standards and eliminating child labor from certain areas of industry where it had not been possible to do away with its evils through State action. This experience has been similar to that under the two national child-labor laws before they were declared unconstitutional. It has been accompanied by widespread public approval of this notable advance in protecting children because it was on the basis of uniform national standards which outlawed the use of cheap child labor as a powerful weapon in industrial warfare. The general popularity of these national bans against the misuse of children has made enforcement of them easy through local work-permit agencies and labor officials with a minimum of Federal action.

There, I think, is the answer.

The CHAIRMAN. I do not think that is the answer, because that is not a parallel case. I do not think it is an argument against the passage of a national law, but I do think that when you get the national law upon the statute books you are going to find that it will be the Federal Government who enforces it.

That has been the experience, and I will venture the assertion that you can ask any United States attorney from one end of the country to the other, and he will tell you the same story.

Mr. DINWIDDIE. If you are in doubt on that point, I wish you would recall Miss Abbott to the witness stand.

The CHAIRMAN. I heard her statement, but I say that practical experience of United States attorneys who have to do with the enforcement of laws where you have a Federal statute and a State statute is quite to the contrary. Any Federal district attorney in this country will tell you the same story.

Mr. DINWIDDIE. Those are laws depending upon the complaint system.

The CHAIRMAN. They are all on the complaint system.

Mr. DINWIDDIE. The 1916 law was dependent on the inspection system supplemented strikingly by enforcement through the States

acting for the Federal Government and using the work-permit system to prevent the children from going to work at all.

Senator BARKLEY. I suppose the outstanding law to which that applied was prohibition, which, of course, was on a different basis, naturally, from any other law with which the Federal Government and the States might deal concurrently.

Mr. DINWIDDIE. I think the record speaks for itself. The two child-labor laws and the child-labor provisions of the codes were enforced with generally popular approval throughout the country.

As to the question of the bearing of these statements that I have made on the form of legislation, I think we can agree that the evidence of economic injury is fresh and powerful, and is cumulative. It is new evidence, so to speak, if you are discussing, for instance, *Hammer* v. *Dagenhart*—distinctly new evidence— which was not introduced into the discussion of that case in the Supreme Court.

The CHAIRMAN. I was going to ask you about that a moment ago, and I overlooked it. That phase of it was never presented to the Supreme Court at all.

Mr. DINWIDDIE. Right.

The CHAIRMAN. And if that phase of it had been presented to the Supreme Court, you might have had a different decision.

Mr. DINWIDDIE. You might not have had sufficient evidence at that time. You have now. It is a different story, in other words.

The same factor, the economic injury generally, and the fear of economic injury from competition, has barred the road to progress through uniform State laws, as has been mentioned, and there is only one solution, I think; that is to use the power of the Federal Government to protect States in the protection of their own children—not to take over the job, but to protect them. That is the way it has actually worked.

The CHAIRMAN. I hope you are right about it, but I think you will find that when it goes into operation for any length of time the Federal Government will have to step in and assume the enforcement of it to a large extent.

Mr. DINWIDDIE. I think it has to be prepared to do it, but I do not think it actually has to do it to any great extent.

For 3 years the second Federal child-labor law was in force, and there were only a maximum of about 51 inspectors required for that purpose in the entire country.

The CHAIRMAN. How many?

Mr. DINWIDDIE. 51, 52, or 53; somewhere along there. The State labor inspectors, as you can see by their annual reports right after that decision, thought it made the enforcement easier for them. That is the way it actually worked, which is the best test of anything.

There are two principles, it seems to me: First, the direct prohibition, and the implementation of that prohibition of the use of child labor in interstate commerce, or in the manufacture of products for interstate commerce, where you know that they are going into interstate commerce. That is a principle which we have tested, and which we know works. The other principle which bears upon the licensing features and the labeling of things of that type, it seems to me goes back again to the question, Can you get a sufficient amount of uniformity in your State legislation to make it work? In the entire

history of the country, everything that we have had bearing upon that point is in a contrary direction. The three new laws passed this year point directly in the contrary direction.

The CHAIRMAN. What three laws?

Mr. DINWIDDIE. Vermont, Massachusetts, and New York; all three different.

The CHAIRMAN. Take the Webb-Kenyon Act. According to the officials who have the enforcement of it, they have told me that as far as the enforcement of it is concerned, they are able to enforce it effectively. Possibly they are misrepresenting these facts, but they have informed me to that effect.

Senator MINTON. As I understand Mr. Dinwiddie, he is pointing out the fact that you have great difficulty in getting uniformity of action in the various States to which this act would apply. For instance, if you shipped child-labor goods into Vermont, you would reach one standard. If you shipped them into Missouri, you would have another standard, and so forth, with 48 different standards all over the country.

Mr. DINWIDDIE. Right; and there are four other States in which such legislation is pending. The chairman has——

The CHAIRMAN. I agree with you. There is no controversy about the fact. If we can pass a law, and have it upheld, which forbids the sale of goods in interstate commerce, or the shipment of goods in interstate commerce, that is the thing that ought to be done, provided we can do it and have it upheld. I think you have pointed out a proposition which, if presented, would be new evidence before the Supreme Court.

Mr. DINWIDDIE. That, it seems to me, is our strong point.

The CHAIRMAN. It might convince them, or give them a loophole for changing their opinion.

Mr. DINWIDDIE. It seems to me so.

The CHAIRMAN. However, when you make a manufacturer brand his goods and say that he is employing child labor in that factory, that, of itself, it seems to me—I may be wrong about it—is going to cause most manufacturers to hesitate about employing children in their factories when they have to brand the goods as provided by this bill.

Mr. DINWIDDIE. Mr. Chairman, I do not believe it would work, and it seems to me that it is a bad principle to say—as I believe is true—"Here is a method which has worked. We believe it is the only one that will work, which all administrators of child-labor legislation, so far as we know, believe will work", and, in the same breath, to say, "Here is another method which does not go that far. We want to try it out." In other words, you are defeating your own argument that the first method is the one that will really work.

The CHAIRMAN. Not at all. In this bill you are recognizing the fact that the Supreme Court has said one of the principles employed is unconstitutional, and in the Barkley bill you ask the Court to reverse itself. I hope it will reverse itself. I think it should reverse itself, but, if it should not reverse itself, in meantime you are putting another obstacle in the way of these people and saying, "You cannot ship your goods in interstate commerce unless you brand them and say to the world that you are making goods and using child labor in your factory."

Mr. DINWIDDIE. I do not believe I made my point clear. This is my point:

If you have to go to the extent of the first child-labor law in principle, as in the amendments which Senator Johnson has introduced, to abolish child labor, if you believe that Congress has the power to prevent shipments in interstate commerce, then it is constitutional to take those essential methods to abolish it.

If you say, however, "We do not have to go to that length; here is another method we might try", you are, in effect, raising the question whether the first method may be unreasonable.

In other words, it is necessary, in the opinion of all administrators with whom I have talked, that you should go to the length of prohibiting, and implementing that prohibition, of shipment in interstate commerce. If you say some other method might be tried, it seems to me you are denying your main proposition.

The CHAIRMAN. You are not denying your main proposition at all. I do not understand your philosophy when you say you are denying it. You are simply saying, "If the Court holds one of them unconstitutional, then we are putting in the way of these people who are employing child labor another obstacle which we think will, from a practical standpoint, make it much more difficult for them to employ child labor in their factories, to say the least."

Mr. DINWIDDIE. The strongest justification for its being constitutional, Mr. Chairman, is that it is a measure which is essential to accomplish a purpose within the power of Congress.

The CHAIRMAN. I understand that. That argument has been made. What I am saying is that you are facing a decision of the Supreme Court here which says that it is constitutional. We therefore put in both provisions.

Mr. DINWIDDIE. I still do not seem to have made my point clear. It is very distinct in my own mind.

The CHAIRMAN. You certainly have not made it clear to me.

Mr. DINWIDDIE. It seems to me that the strongest justification for the constitutionality of that principle is that it is essential to implement and make effective the power that we acknowledge Congress has.

The CHAIRMAN. I understand that.

Mr. DINWIDDIE. If it goes beyond that, it gives more room for argument as to unconstitutionality.

The CHAIRMAN. The Supreme Court has held that it is unconstitutional, has it not?

Mr. DINWIDDIE. Right, but we have new evidence. I think that concludes my presentation, except for certain details of the bills under consideration, which I should like to mention. It will take me only a very few moments.

I believe testimony has been given as to the impossibility of enforcing the labeling method, and I will not go into detail on that.

There is one other point I should like to mention on the constitutionality of the provision prohibiting the shipment of goods from factories in which cildren have been employed within 30 days. It is a detail, but I think it is an important one:

We find evidences—and Labor Department officials find many more, of course, than we do—of children in factories or other types of employment where, allegedly or actually, they may have been employed for a certain type of employment. If there is a dangerous occupation anywhere within the vicinity, they are almost certainly at that, unless there is some mighty rigid inspection and prohibition on the part of the factory.

I have pictures of children who, for instance, are supposed to be errand boys in factories, or truck-delivery boys in factories. One was engaged in work on a stapling machine at odd times. At other times he took things and dipped them in aniline dye, which a child should not be exposed to.

In other places a child is diverted from some type of occupation——

The CHAIRMAN. What is your suggestion with reference to what it should be?

Mr. DINWIDDIE. My suggestion is that the provision for exclusion of the goods from the factory goes to the heart of the problem as to whether you can really enforce the prohibition against child labor.

The CHAIRMAN. That is what I asked one lady this morning.

Mr. DINWIDDIE. Yes.

The CHAIRMAN. Suppose you said that you should prohibit all children under 18 from working for any mining company. They might be engaged in office work, or they might be engaged in surface work, or they might be engaged as messenger boys.

You do not think that a boy of 16 could not do some of that work. Do you not think it would be better for him to be engaged in doing some work of that kind rather than running around the streets?

If his parents do not or cannot send him to school, would it not be better for him to be engaged in some useful occupation rather than playing around the streets? After all, we want to look at it as a practical proposition. We do not want to do the children of the country a lot of harm when they are trying to do them good.

Mr. DINWIDDIE. Surely.

The CHAIRMAN. How are you going to reach that?

Mr. DINWIDDIE. I should say the wording of the bill should be such, and such regulations should be set up, that you could exclude cases where there was no harm done by employment of the child. If a child goes down in a mine, obviously he is exposed to hazards. If a child is above the surface, he might be in the breakers, or some such place, where he is still exposed to hazards. You have to consider all those things. I think it would take too much of our time to discuss all the details, but I think that could be satisfactorily worked out. There are certain types of industry where, if you have a child anywhere around, he is going to be exposed to hazards.

Senator BARKLEY. The immature child, who has not the judgment, the caution, and the discretion of a mature person, if he is in the neighborhood of hazardous machinery it appeals to him or attracts him. It fascinates him, and he gravitates toward it, although his work may not be there.

Mr. DINWIDDIE. We made a study in three States—

Senator BARKLEY. It is like a man who has an almost irresistible desire to jump off a tall building. He is not going to do it, if he is in his right mind, but there is something about a thing like that that attracts people.

Mr. DINWIDDIE. It is worse, because the man knows he cannot get away with it, and the child does not.

Senator BARKLEY. Yes.

The CHAIRMAN. After all, you cannot prohibit that. Take a child who is not working at all. He naturally gravitates toward machinery and things of that kind, where he will likely be injured. We do not want to prevent children, it seems to me, who are 16 years of age, from working, where no hazardous occupation is involved. We have to be careful about that, in my judgment.

Mr. DINWIDDIE. I quite agree with you; I think you are correct.

I spoke about the provision prohibiting employment up to the age of 18, or the goods from places where children are employed up to the age of 18 in hazardous occupations. I think we ought to take a step in that direction. It seems to me unfortunate if we do not.

Just a couple of other details and I shall be through:

Section 2 (b) of the Barkley bill, without previous mention of such official, refers to the Chief of the Children's Bureau as having authority to enter and inspect for the purpose of enforcement. We believe this should be clarified and that both the Secretary of Labor and the Chief of the Children's Bureau should be designated in both sections 2 (b) and 2 (c), establishing the Children's Bureau as the enforcing agent under the Secretary of Labor. We believe that the right of entry and inspection should be definitely specified, as was done in the Federal child-labor law of 1916.

Section 4 (a) of the Barkley bill refers to the States, Alaska, Hawaii, and the District of Columbia as being the United States. It must have been through oversight that Puerto Rico was not included. It may have been the intention to include Puerto Rico, but that was not done.

I would like, without going into further details, to reinforce all that Miss Abbott said about cooperation with the States. I have a brief statement on that here, but her statement covered all the points I would make.

Thank you, Mr. Chairman and gentlemen of the committee.

STATEMENT OF WILLIAM H. DAVIS, REPRESENTING NATIONAL CONSUMERS LEAGUE

Mr. DAVIS. Mr. Chairman and gentlemen of the committee, my name is William H. Davis. I come here representing the National Consumers League to speak to you, in a sense, about the legal aspects of this thing, but particularly to urge the committee, or to put before the committee——

The CHAIRMAN. Let me interrupt you. Somebody was here the other day representing the manufacturers' association. Is there anybody representing the manufacturers' association here today? They said they wanted to be heard.

Senator BARKLEY. Mr. Emery was here.

The CHAIRMAN. Notify him that we will hear him the day after tomorrow, if he wants to be heard. We will give him the opportunity.

I understood him to say, however, that he was in favor of these bills, except that he wanted them made stronger.

Mr. DAVIS. My object was to put before the committee some considerations as to why the Consumers League thinks it would be desirable not to include both of these plans, but to limit it, rather, to the direct plan of the old law, which was held to be unconstitutional in *Hammer* v. *Dagenhart*.

I may say, Mr. Chairman, in view of what you said to one of the witnesses, that it is not my idea that there is any legal inconsistency between the two plans. On the contrary, I think the sentence which you read from the opinion of the Supreme Court, in which they said, as I take it, that the two things proceed on the same general principle, indicates the contrary.

The Consumers League is of the view that has been testified before you by others here today, that administratively the two things are inconsistent.

The CHAIRMAN. They would not be inconsistent, Mr. Davis. Suppose the Supreme Court upheld both of them.

Mr. DAVIS. Yes.

The CHAIRMAN. Are you a lawyer?

Mr. DAVIS. Yes.

The CHAIRMAN. If they upheld both of them, then you, as a lawyer, would know, would you not, that what would happen would be that the one that prohibited them from shipping it would be the one they would enforce.

Mr. DAVIS. Yes; but——

The CHAIRMAN. As a legal proposition and as an administrative proposition, you certainly would not try to enforce the provisions of the law which were the weaker ones, and eliminate the stronger ones, would you?

Mr. DAVIS. Certainly not. If they upheld both, the second one would drop out of the picture; there is no doubt about that.

The CHAIRMAN. As a practical matter.

Mr. DAVIS. As a practical matter.

The CHAIRMAN. After all, you have a great many laws that are passed—for instance, you have laws passed with reference to the sale and transportation of narcotics. You have, in the sale and transportation of narcotics, many times, two provisions: One making it a felony to do certain things, and another making it a misdemeanor to do certain things. You can prosecute, generally, either under the misdemeanor or under the felony provision.

But if you have a strong case you prosecute them under the felony provision; if you do not have as strong a case then you pick out the provision that relates to the shipment instead of the sale, and you perhaps prosecute them under another provision.

Senator MINTON. Do you mean to say that under the same facts, and at the same time, one provision makes a thing a misdemeanor, and another provision makes the same thing a felony?

The CHAIRMAN. No; but you have frequently one provision saying that it is a misdemeanor to do one thing, and another provision saying that it is a felony to do another thing. Frequently the misdemeanor is included in the felony, but the felony is not included in the misdemeanor. If you can prosecute under the felony clause, you prosecute under that clause; and, if you cannot prosecute under the felony clause, you prosecute under the misdemeanor provision.

Senator BARKLEY. In the enforcement of most criminal statutes, where the man is indicted for the major offense, he may be convicted of the minor offense under the same indictment.

Mr. DAVIS. My view, Mr. Chairman, is this: I fully understand your point, that if the larger thing is upheld by the Supreme Court, the smaller will fall out. If, on the other hand, the larger is overthrown by the Supreme Court, your view is that the smaller will be helpful. I understand that thoroughly.

Nevertheless, I believe it would be the part of wisdom for Congress to go right ahead with the very rule of the *Hammer* v. *Dagenhart case*, and test that again.

The CHAIRMAN. In other words, what you want to do is to put it up to the Supreme Court and say, "You decided this; now we are going to put it up to you again and see if you won't reverse your decision"?

Mr. DAVIS. Yes.

The CHAIRMAN. In order to do that you do not need to pass a new law, do you?

Mr. DAVIS. You mean you would put the 1916 law up to the Court again?

The CHAIRMAN. Certainly. Could you not put the 1916 law up to the Supreme Court again?

Mr. DAVIS. I never gave any thought to the question. You would know more about that.

Senator BARKLEY. The only way to do that would be to get somebody to proceed on a given state of facts that would square with the 1916 and 1914 acts, and get some district attorney who would be willing to prosecute, and some court willing to assess a fine or penalty, whatever it is, notwithstanding the previous decision of the Supreme Court.

The CHAIRMAN. That——

Senator BARKLEY. The practical difficulty, of course, would be that the lower courts feel that they are bound by the decisions of the Supreme Court until they are reversed. There is a practical difficulty in getting a case to the Supreme Court which would be very great.

The CHAIRMAN. There would not be any practical difficulty. I mean to say that you could do it.

Mr. DAVIS. I do not know, Senator. I would not express an opinion about that.

At any rate, the point that we wanted to put before you is that we think it is the part of wisdom to proceed with the challenge of this very principle which was overthrown. In other words, my position is that what ought to be done today is to ask the Supreme Court again whether they are going to sustain the majority or the minority of the 5-to-4 decision in *Hammer* v. *Dagenhart*.

The CHAIRMAN. As a general proposition, as a lawyer, you do not ordinarily do that, do you?

Mr. DAVIS. No; I do not think so.

The CHAIRMAN. Of course not.

You practice law in New York, do you not?

Mr. DAVIS. Yes.

The CHAIRMAN. As a practical matter, if the Supreme Court of New York decides a case one way, and you have another case on all fours with that case, you do not take that case, and take your client's money, and go into court and say, "Let us put it up to the Supreme Court and see if they will not reverse it."

You would not do that as a practical matter, as a lawyer?

Mr. DAVIS. I would do it as a matter of last resort, of course.

The CHAIRMAN. You would not take your client's money——

Senator BARKLEY. Regardless of taking the client's money, he might take the case to the court.

Mr. DAVIS. I can answer that.

The CHAIRMAN. You would not do that, ordinarily, would you?

Mr. DAVIS. I do not know what you mean by "ordinarily." If I had no other recourse, I would do it.

The CHAIRMAN. Have you ever done it yet?

Mr. DAVIS. I practice in the Federal courts only.

The CHAIRMAN. You certainly would not take it into the Federal courts, would you?

Mr. DAVIS. I would; yes.

The CHAIRMAN. You would not expect to get anywhere, would you?

Mr. DAVIS. Let me answer your question.

The CHAIRMAN. Let me ask you this: If you went into the Federal courts with this law, you would go into the Federal district court, and the Federal district court would immediately say to you, "The Supreme Court has declared this law unconstitutional", and it would follow the Supreme Court of the United States, would it not?

Mr. DAVIS. Yes; it is bound to.

The CHAIRMAN. And the circuit court of appeals would do the same. You would finally come to the Supreme Court.

Mr. DAVIS. Yes.

The CHAIRMAN. The Supreme Court may have changed its mind with reference to it.

Mr. DAVIS. They have been known to do that.

The CHAIRMAN. Every court has been known to do it—not only the Supreme Court of the United States, but every court has been known to do it. The court that will not reverse itself at times, or any individual who will not reverse himself, at times, is not very big.

Senator BARKLEY. The only way to get the question again before the Supreme Court is to pass some law in the testing of which the Court might again review its decision in that case.

Mr. DAVIS. Yes.

Senator BARKLEY. It cannot be done by taking a case before them under the 1914 Child-Labor Act. But if Congress were to pass an act prohibiting the interstate shipment of goods under certain conditions, and the *Dagenhart case* were relied upon in the Supreme Court to nullify the act, the Supreme Court, in passing upon the new act, could overrule its previous decision in the *Dagenhart case*, and thereby probably revive the statute. But in the absence of some new act by Congress that is analogous to that law, there is no way to get that principle to the Supreme Court.

Mr. DAVIS. There must be another act that raises the same principle.

Senator BARKLEY. The same question; yes.

The CHAIRMAN. So that, as a matter of law, the Attorney General could say to the Federal district attorney, under the present law, "You go down there and prosecute a case." The district court would

undoubtedly follow the Supreme Court, and he would go to the circuit court of appeals, and the circuit court of appeals would follow the Supreme Court. Then you would present it to the Supreme Court, to see if the Supreme Court would not reverse itself and hold the law constitutional.

Mr. DAVIS. You mean without any new law?

The CHAIRMAN. Without any new law.

Mr. DAVIS. I do not think I would.

The CHAIRMAN. You could do it, could you not? After all, it is still upon the statute books.

Mr. DAVIS. Until the decision in the *Dagenhart case* is overruled, the 1914 statute, I should say, is invalid, and has no weight at all.

The CHAIRMAN. Stop and think. You have the same identical proposition you had here the other day. We are doing exactly that thing, practically. We are saying that the law of the District of Columbia is in effect, notwithstanding the Supreme Court has held it unconstitutional.

Senator BARKLEY. That case in which they reversed themselves in the District of Columbia decision was brought up on another law.

The CHAIRMAN. Yes.

Senator BARKLEY. Not upon the original act, which they nullified.

Mr. DAVIS. They said, "The *Adkins case* is hereby reversed." When they say that of the *Dagenhart case*, then you can go into court again under the 1914 act.

The CHAIRMAN. You could go in there and present another case to the court on this law, and the court would say, "That was held unconstitutional."

You could go up to the circuit court of appeals——

Mr. DAVIS. I do not know about that, Senator. I would not have any opinion about that.

The CHAIRMAN. The same principle applies as applies with reference to the District of Columbia.

Mr. DAVIS. I do not think so. I think the principle is very different.

The thing I wanted to address the committee about——

The CHAIRMAN. What you are doing is simply putting it up to the Supreme Court and saying, "Won't you reverse this case?" You are presenting new evidence.

Mr. DAVIS. The evidence Mr. Dinwiddie mentioned; yes.

The CHAIRMAN. You could say, "We are presenting new evidence."

Mr. DAVIS. Yes; but I would say, on a new law——

Senator BARKLEY. You cannot present new evidence in that case. There is no way to get a rehearing on that case in the Supreme Court.

Senator MINTON. The decision in *Hammer* v. *Dagenhart* is just the law of that case, and if the Supreme Court reverses *Hammer* v. *Dagenhart*, that is just the law of that case. But the law of the land is different from then on.

Mr. DAVIS. At any rate, the committee is talking about passing a law on child labor, and our views are that it would be the part of wisdom for the committee to confine that to the first procedure that is covered by Senator Barkley's bill, rather than to include both that and the second procedure, which is covered by the Wheeler-Johnson bill.

I could not hope, and I do not intend to try, to enlighten this committee on the subject of constitutional law in its application to this particular question in the many cases that have been decided.

The CHAIRMAN. I cannot understand your reasoning or the reasoning of anybody else who is in favor of child-labor legislation and wants to do everything he can to prevent child labor in this country, who comes before the committee and says that it is not desirable to have two strings to your bow.

If the Court says that one is unconstitutional, then you have another that you know they are going to hold constitutional because of the previous decision.

If there is any logic or any sense in that, I cannot see it.

Mr. DAVIS. Senator, let me tell you the background of that in my own mind. I was a member of the President's Committee on Industrial Analysis, so-called, that reviewed the N. R. A. Being the only lawyer on the committee, it fell to my lot to direct the work of the staff which was working on the legal aspects of it.

They made, under my direction, a very careful study of the whole map, so to speak, of the courses that were open, or supposed to be open, to this sort of social legislation.

The CHAIRMAN. Did you pass upon the question of whether or not the *Schechter case* would be upheld as constitutional?

Mr. DAVIS. No; I did not. I was not a member of the legal force of N. R. A. I was a deputy administrator, and afterward compliance director.

The CHAIRMAN. Did you advise that the *Schechter case* should be carried up?

Mr. DAVIS. I had nothing to do with that, but in making this study, which was made by Mr. George W. Kretzinger, Jr.—that is, under his direction; he was the head of the staff—they expressed this opinion, which we quoted in the final report of the committee, which is House Document No. 158 of this Congress. This is the opinion:

> **Before any effective regulation of wages, outside of such incidentals as time and method of payment, can be achieved by either Federal or State Governments, a frontal attack, without any attempt at evasion or subtle distinction, must be made upon four decisions of the Supreme Court—the *Adkins* and *Tipaldo cases; Hammer* v. *Dagenhart* (1918); and the *Guffey Coal case*.**

Since that time the frontal attack has been made on the principles of the *Pitaldo* and *Adkins cases*, and it has been successful. Since that time a frontal attack has been made on the principle that they were referring to, of the *Guffey Coal case;* that is, the principle that manufacturing is local, and, even though it affects interstate commerce, cannot be regulated by the Congress. That has been successful.

The CHAIRMAN. You would be making a frontal attack upon it in this bill, would you not?

Mr. DAVIS. In your own bill?

The CHAIRMAN. Yes.

Mr. DAVIS. That is true. It would be a frontal attack, but it would be coupled with this second step.

Mr. Dinwiddie's suggestion—and I would not go, perhaps, quite as far as he—was that one of the requirements of constitutionality would be that the means should be essential; the means employed by Congress should be essential to the attainment of the purpose. I

would not go that far. I think it is enough if, in the judgment of Congress, it is appropriate.

All American citizens—certainly all American lawyers—know that the Supreme Court, within that very area of what is within the judgment of Congress as to appropriateness of means, has gone very far afield from the desires, certainly, of the proponents of this bill. It is in that field that the greatest difficulties—all these difficulties, indeed—have occurred. In my judgment, under the circumstances, and having in view not only the importance of child labor but the fact that the majority opinion in the *Dagenhart case* has much wider implications, affecting not only child labor but a lot of other legislation that depends on the commerce clause, including, I think, the Public Utility Holding Company Act, the Security Act of 1933, the Securities and Exchange Act of 1934——

The CHAIRMAN. I do not agree with you on the Utility Holding Company Act.

Mr. DAVIS. Well, to some extent it is based on the interstate-commerce clause. Take the marketing provisions of the A. A. A.——

The CHAIRMAN. The Utility Holding Company Act is based entirely upon the interstate-commerce law.

Mr. DAVIS. What happened, Mr. Chairman, in the *Dagenhart case?* The principle there involved is that in some way, by what I speak of as a shadow cast by the tenth amendment, you will find the power of the Congress to regulate interstate commerce is somehow lessened to a level lower than the power of Congress to regulate foreign commerce, or to regulate the mails.

The CHAIRMAN. Let me ask you this——

Mr. DAVIS. I do not believe that——

Senator MINTON. Or commerce with the Indians.

Mr. DAVIS. Or commerce with the Indians.

I think it is essential to the welfare of the country that that decision should be reversed, either by the judgment of the Court or by the judgment of the people.

The CHAIRMAN. I agree with you; but let me ask you this: It is an extremely easy thing to criticize a court. But has this thought ever occurred to you? Suppose that the original 13 States had ever thought that the Supreme Court of the United States would have gone as far as it has gone in the regulation and control of interstate commerce: Do you think that the Constitution of the United States would ever have been ratified by the 13 States?

Mr. DAVIS. I do not know, Senator. They were a pretty nervy group. They might or might not have been terrified.

The CHAIRMAN. But the thing they were afraid of was that the Federal Government would have too much control over the 13 States as it was.

Mr. DAVIS. Some of them were and some of them were not, Senator.

The CHAIRMAN. Practically every State was extremely——

Mr. DAVIS. I think what happened, Senator, was that until the smaller States were assured that they would have the representation that they were finally given, which put them, as they thought, on an equality with the larger States, they were very much afraid of the central power.

The CHAIRMAN. Certainly.

Mr. DAVIS. As soon as they got that assurance, it was the big States that began to be afraid of the central power. It is a matter of reflection of the balance of the States.

The CHAIRMAN. They were afraid, not simply of having the representation, but they were extremely afraid of the central power interfering with their local or State government.

Mr. DAVIS. If I may go ahead with this——

The CHAIRMAN. Since that time our whole economic structure has changed in this country, and by reason of the fact that it has changed, now we say that the Constitution should be changed.

I think it should be changed.

Mr. DAVIS. I do not, myself, but the point, I think, in this particular case—at least, the point I am trying to make—is this: In my judgment, the Congress having been given plenary power to regulate interstate commerce, that power is not subject to any reflection from the tenth amendment, and may be exercised by the Congress in the exercise of its own judgment in a way which, in the judgment of Congress, will promote the general welfare.

My own view is that the appeal from the exercise of that judgment is not to the Supreme Court, but to the sovereign people.

Senator MINTON. An appeal to the tenth amendment is begging the question, because, if you admit that Congress has been granted the power, then it has not been reserved to the States.

Mr. DAVIS. Yes.

Senator BARKLEY. The commerce clause of the Constitution, which gave Congress the power to regulate commerce among the States and with foreign countries, must be of equal dignity. Congress must have the same power to regulate commerce among the States as it has to regulate commerce with foreign countries. Evidently that was in the minds of the framers of the Constitution. Otherwise they would have made themselves some differentiation between the two.

Mr. DAVIS. Yes. Let me review briefly, without citing cases, or anything, what seems to me to have happened since the decision in *Hammer* v. *Dagenhart*——

The CHAIRMAN. In connection with the statement just made by the Senator, of course, the power to regulate commerce between the various countries does not give Congress any power to go in and regulate the industries.

Senator BARKLEY. It gives power to prohibit importations.

The CHAIRMAN. Oh, yes. That is quite different.

Mr. DAVIS. Nobody is talking about regulating industry in this bill. All this bill says is that you shall not put into the channels of interstate commerce certain things. It is well known, and it has frequently been remarked, and was remarked by Mr. Dinwiddie to the chairman, that there was not presented to the Court in the *Dagenhart case* any evidence that this unfair competition actually tended to reduce or to interfere with the total flow of interstate commerce. There is evidence of that available now.

Incidentally, I should like to say, if the members of the committee do not know it, that in the congressional committee studies that preceded the act of 1914 there was a very elaborate and complete investigation of the matter of competition between the States of different

levels of law. Mr. John W. Davis' brief in that case not only reveals that, but goes into the same situation which occurred in Europe, where the different European states were unable to pass these laws limiting child labor for fear of competiiton with the neighboring states. That is all very fully covered there. But there was no evidence of the effect of that competition on the actual quantity and flow of interstate commerce.

Senator MINTON. There would not have been anything over there to prevent any state in Europe from erecting tariff barriers against child-made goods in the other states.

Mr. DAVIS. That is true.

That brings up, Senator, a very interesting aspect of the whole thing that has not been mentioned here, or has been mentioned only incidentally. That does not answer the problem, because the European states, and also the States of the United States, are competing with one another in foreign territory—that is, foreign to the State.

If you prohibit the importation into New York, or the sale there, of the products of child labor, that helps the competitive situation in New York. But suppose Georgia has no child-labor law. New York has such a law. They are both competing for a market in St. Louis, which has not.

No State law can cover that difficulty. Only a national law can cover that situation.

The CHAIRMAN. But you do appreciate this fact. Suppose you knew that you could not get a constitutional amendment, and suppose you knew that the Supreme Court would hold this other law unconstitutional. Would you then let the thing rest, and not pass any law at all?

Mr. DAVIS. No; I would not.

The CHAIRMAN. You would then do what we did with reference to the prison-made-goods amendment, as the next-best thing.

Mr. DAVIS. Yes; and at the same time press the constitutional amendment.

The CHAIRMAN. Yes.

Mr. DAVIS. I think that puts the situation exactly, Senator. I see your point, but I believe, sincerely, that this principle involved in the *Dagenhart case*, which is now the only remaining barrier to social legislation, is so important to the country that we ought to walk right up to it, if I may put it that way, fight it out, and find out——

The CHAIRMAN. You are walking right up to it in this bill.

Mr. DAVIS. I was going to say that I think all practical men will admit that there is this sort of a backwash, so to speak, from any double bill: The Court, the members of which are only human beings like ourselves, is going to say, "Well, of course, if Congress passed this law on the basis of the prison-labor case, they must have regarded that as an adequate means of curing the difficulty, and we will not weaken the presentation of the proposition."

The CHAIRMAN. It will be made perfectly clear in the debates of Congress that that is not so. After all, the Supreme Court generally looks at the debates of Congress when it comes to decide these laws. To me that is the only possible reason that could be advanced, that what you would say would be that you would be afraid that the Supreme Court——

Mr. DAVIS. I think so too, Senator Wheeler, if you agree with me on this, that the other suggestions that were advanced, and are advanced here, can be taken care of by a careful phrasing of the bill itself.

The CHAIRMAN. Of course.

Senator BARKLEY. Let me ask you this question as a lawyer. It is a question that has arisen in my mind, and I have not asked any layman for his opinion about it: Assuming that a double-barreled bill were enacted, based upon the direct prohibition of the transportation of child-labor goods in interstate commerce, in one section, and based in some other section on the prison-made-goods theory, and assuming that the Supreme Court would hold both of them constitutional in proceedings involving each one of them separately, and that later on a proceeding might be brought before the Supreme Court involving only one section, having both of these provisions in a single bill, might it be considered the idea was not to have the act apply in a State where there is a limited provision? In other words, while both were held constitutional, the broader one might not apply in States where the more limited one might apply.

Mr. DAVIS. All of us, all lawyers at least, know this, particularly in these matters of constitutional law, that above everything else directness and simplicity are desired. The Supreme Court—and I do not criticize the Supreme Court in any general sense; I am a lawyer, a member of the bar, and have the greatest respect of course for the Supreme Court as an institution, in every sense. But it certainly is true if you can get this question again before the Court in its simple form, then when they answer the question we will narrow the principle which originated with Mr. Chief Justice White that the tenth amendment in some way reflects on the commerce clause, is or is not the law of the land. And unless we do that we will never know.

The CHAIRMAN. The Barkley law and our law with reference to one provision are the same except as to some details. Now, as a lawyer you want to test out the law, we will say, and you would not take both up to the Supreme Court, would you? You would want to prosecute your case under the strongest view you had.

Mr. DAVIS. Wait a minute——

The CHAIRMAN (continuing). Let me finish my question.

Mr. DAVIS. If you will just ask me what I would do, and not say what I would do, I will answer your question.

The CHAIRMAN. All right. Let me put it in the form of a question, and that was what I meant: As a practical matter you would not prosecute a man under both provisions at the same time, would you?

Mr. DAVIS. Well, I don't know whether I would or not.

The CHAIRMAN. Of course you would not.

Mr. DAVIS. Now, hold on, Senator Wheeler——

The CHAIRMAN (continuing). Let me complete my question. Have you ever been a prosecuting attorney?

Mr. DAVIS. No, I have not.

The CHAIRMAN. Let me point out to you as a pure matter of practice that you would undoubtedly——

Mr. DAVIS (interposing). Of course you have been a prosecuting attorney, as I understand it.

The CHAIRMAN. As a purely practical proposition what would you do in prosecuting a case in a United States court? We will say here is a man who has violated the law; he has shipped goods in interstate commerce contrary to law. You would go in and prosecute him under that provision of the law that you wanted to test. You would file a complaint charging that he had shipped in interstate commerce goods made in a factory employing child labor. And you would go to the Supreme Court upon that issue and that issue alone. You wouldn't go there upon an indictment charging——

Mr. DAVIS (interposing). Wait a minute. Suppose the shipment had been made into a State in which the sale of prison-made goods is prohibited?

The CHAIRMAN. It would not make a particle of difference.

Mr. DAVIS. So that the act upon which you based your charge was at once an infraction of both provisions of the law?

The CHAIRMAN. It would not make a particle of difference.

Mr. DAVIS. Wouldn't you then as prosecuting attorney stand on both of them?

The CHAIRMAN. No. You would pick out the strongest provision of the law upon which to prosecute him. As prosecuting attorney you would say: This man shipped goods in interstate commerce that were made in a factory employing child labor, and you would prosecute him on that, and you would thereby get a straight issue.

Mr. DAVIS. I do not know about that. You have the advantage of me on criminal law.

The CHAIRMAN. Well, I do not think there is any question about this procedure.

Senator BARKLEY. Let me say that I am not as good a prosecuting attorney as my friend, Senator Wheeler, but that I was one once. Let us suppose that you were a United States attorney and that a charge is made upon which you wish to prosecute. I realize it is difficult to lay down hypothetical cases and tell in advance just what you would do, but let us suppose that both provisions are put into a law, and there is a shipment of goods into a State where there is no provision against child-made goods. Then you would prosecute on the direct interstate feature. On the other hand, let us suppose that goods made by child labor are shipped into a State where there is a local provision against the sale of such goods. Then you would have your choice, we will say, as to which section of the same statute you would proceed on. If you proceed only on the section providing for violation of interstate shipment of goods, and you lose that case, of course you would have to go all the way up to the Supreme Court before you could get a test of it. But if you were a prudent prosecuting attorney, desiring to convict somebody, you might proceed under both sections, so that if the lower court held against you in one case; if the lower court should hold that both provisions being in the same statute, Congress did not intend they should both apply to the identical transaction and therefore in a particular State which did not have a local statute, the other section did not apply, wouldn't you as a prudent prosecutor proceed on the theory of a violation of both sections, so as to test them out? Unless you really intended primarily to carry it to the Supreme Court simply as a test of one section, and certainly if you wished to punish somebody for violation, you would proceed against him for violation of both.

Mr. DAVIS. I will answer that question by asking Senator Wheeler a question, if he would not proceed under both.

Senator WHEELER. Of course, if I wanted to test the law. And you said you wanted a frontal attack.

Mr. DAVIS. Yes; with no strings tied to it.

The CHAIRMAN. Well, if I wanted to meet it with a frontal attack, with no strings tied to it, I would pick out a provision and say: You shipped these goods in violation of law, and I would thereby get a frontal attack, whether the goods were shipped into one State or another.

Mr. DAVIS. Doesn't it impress you that the very people in this country who have devoted their time to the problem of child labor—and you have heard two women and a man here who have so devoted their time; and there is the Consumers' League, the leaders of which have devoted their lives to it; and they come before this committee and say to you that in their opinion it would be an administrative mistake to put both provisions in the act. Now, I do not know about that, but it impresses me tremendously.

The CHAIRMAN. But I am not impressed with it at all, because as a practical matter I know, and any lawyer who knows anything about it at all knows, it cannot be done that way if they want to get a law. If they just want to make a frontal attack upon the law and go up to the Supreme Court and take 2 or 3 years to test it out, and then when they lose out on that, come back to something else, why, that is a different thing.

Mr. DAVIS. I understand your contention.

The CHAIRMAN. On the other hand, I am assuming that these people really want to do something constructive, and do it effectively.

Mr. DAVIS. I assume that all right.

The CHAIRMAN. And do the best they can to stop child labor.

Mr. DAVIS. Well, we all want to do that. Now, Mr. Chairman, I understand your view perfectly well, and I have expressed my own views. I should just like to say a word or two more about some things that have happened as it seems to me since the *Dagenhart case* was tested.

The CHAIRMAN. All right.

Mr. DAVIS. Since the decision in *Hammer* v. *Dagenhart* much water has passed under the bridge, among other things the administration of the N. R. A. codes, with the overwhelming majority—in fact, unanimity, as far as we can find—of manufacturers abhorring the use of child labor and evidencing a willingness to give it up as soon as they might have any assurance it would be given up by their competitors.

It was made absolutely clear, and perhaps the only absolutely clear thing about the N. R. A. was that every manufacturer, and I do not think we had an exception, that everybody was opposed to the use of child labor. As you suggested this morning, any man, whatever his private thoughts were, wants to get away from it. I do not think we had a man to come in and say he was unwilling to give up child labor if he could be assured his competitors would be prevented from using child labor.

It is quite clear from that experience that the public generally in this country regards child labor as at least immoral and harmful.

They believe it to be just as immoral as to buy a lottery ticket or look at fight films or to sell a "penny package" of candy to a child. The Supreme Court upheld this view in *Federal Trade Commission* v. *Keppler*.

There has also been in the Supreme Court a certain amount of enlargement of the doctrine of unfair competition, particularly in the direction, in that *Keppler case*, of holding, as they expressly did there, that unfair competition in interstate commerce existed where it was made to appear that the sale of this lottery candy, this "penny package", while not in itself unlawful, compelled other candy manufacturers, who disapproved of the business, to meet competition. The Court said that a method of competition which casts upon one's competitors the burden of the loss of business unless they will descend to a practice which they are under a powerful moral compulsion not to adopt, even though it is not criminal, involves the kind of unfairness which Congress in the exercise of its power under the commerce clause, is able to prohibit.

There has also been renewed recognition of the fact that the power of Congress includes the power to foster as well as the power to protect interstate commerce; and that to put an end to injurious practice, with consequent improvement of the competitive position of a group of producers, is in itself a worthy end entirely consonant with the public interests.

One thing was mentioned, and that is in the *Dagenhart case*, because the fact was relied upon that the goods themselves were useful and not noxious. In these other cases it had been contended the goods were noxious in some way, whereas the products of child labor were not noxious or harmful. That was thought by many writers on the subject to be the foundation of the decision, or at least a broad stepping stone to it. It was criticized by the publicists on the subject.

The Supreme Court has characterized as inadmissible the contention that merely because the articles excluded from interstate commerce are useful and harmless in themselves, the Congress is without power to exclude them from interstate commerce, and has approved the act of Congress making it unlawful to transport prison-made goods from the State of their manufacture into a State which prohibits the sale of such goods.

So that much of the *Dagenhart case* has been disposed of, and it comes down to what you state, to what the Court says in the *Kentucky Saddle case*, and the Court held in that case that the law was unconstitutional because it was the aim of Congress to regulate manufacture within the State, that that was the aim of the bill. Now it has come down to that narrow basis, and I say this without any attempt to predict——

The CHAIRMAN (interposing). It has not come down to it. That is what the decision was.

Mr. DAVIS. Well, I mean the thing has narrowed itself down to that. In the *Kentucky Saddle case* they said that despite the fact that the products of prison-made labor are in themselves harmless, Congress has the right to prohibit their importation into States where their sale is forbidden, because there they compete and reduce the level of wages and prices.

Now, the principle there recognized is clear. In this case Congress is confronted with a proposal to confine itself either to the broader method or to a bill which includes the broader and the narrower method as well; and evidence is presented to this committee as to the administrative inadvisability, we will say, of the second method.

Suppose the Congress were confronted, or this committee were confronted, with a choice between either the second section of the Johnson-Wheeler bill, or the section that is common to both of them, the purpose being to use the commerce power to prevent child labor, and the means chosen being to close the channels of interstate commerce; and the Supreme Court having held that you certainly could pass the second bill. Now, if the Congress in its own judgment and on the evidence before it comes to the conclusion that the first method is more appropriate and effective than the second, can the Supreme Court say that that makes it unconstitutional? Can the Supreme Court go behind the judgment of Congress on that?

The CHAIRMAN. Of course it can.

Mr. DAVIS. I do not think so.

The CHAIRMAN. Well, I do not think there is any question about that at all.

Mr. DAVIS. In other words, I think in this *Saddle case*——

The CHAIRMAN (interposing). They went behind it.

Mr. DAVIS. Of course they did. And of course they can do it in that sense. But is there any constitutional consistency in saying that the Congress can use one method to stop a thing and not another?

The CHAIRMAN. Oh, yes; because the two methods are different. One they have held is constitutional. The Congress was faced with the same problem with reference to prison-made goods.

Mr. DAVIS. Yes.

The CHAIRMAN. And the Congress wanted to stop the transportation of prison-made goods. We said on account of the *Dagenhart case* we could not do it.

Mr. DAVIS. Yes.

The CHAIRMAN. Inasmuch as we haven't the power to do it that way, we will take this other method. Now, we say the same thing with reference to the other matter.

Mr. DAVIS. Yes.

Senator BARKLEY. In the *Kentucky Saddle case* the Court was dealing with a specific case, and it only applied because prohibiting that kind of goods. One basis of the decision was that while the goods themselves were not deleterious or harmful, they did affect in a harmful way competition in interstate commerce, and therefore that was the basis for holding it constitutional. But as a matter of fact the shipment of prison-made goods into a State where their sale is prohibited is no more injurious to the commerce of that State than the shipment of those same goods to some other State that does not prohibit them. So the injury to commerce is the same regardless of the local law, and might have considerable bearing upon a new approach to the subject by the Supreme Court itself.

Mr. DAVIS. Yes. Is the Court to say that Congress, having power to protect competition in a State where a law is in effect, has no power to protect against the same competition in a State where a law has not been enacted? I do not believe so.

The CHAIRMAN. What you are saying is, that is the reason why the Supreme Court ought to have overruled this other case.

Mr. DAVIS. Yes.

The CHAIRMAN. I agree with you that they ought to do it. And I think there is a very good possibility that they will do it.

Mr. DAVIS. You want to give them a chance to do it?

The CHAIRMAN. I want to give them a chance to do it.

Senator MINTON. Yes; I want to give them a chance to do it.

The CHAIRMAN. We will now adjourn until 10:30 Thursday morning. I am sorry that I cannot accommodate anyone else today, but the members of the committee cannot be here this afternoon.

(Thereupon, at 2 p. m., Tuesday, May 18, 1937, the committee adjourned to meet at 10:30 a. m., Thursday May 20, 1937.)

TO REGULATE THE PRODUCTS OF CHILD LABOR

THURSDAY, MAY 20, 1937

UNITED STATES SENATE,
COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

The committee met at 10:30 a. m., pursuant to adjournment on Tuesday, May 18, 1937, in room 412, Senate Office Building, Senator Burton K. Wheeler presiding.

Present: Senators Wheeler (chairman), Barkley, Johnson of Colorado, Moore, White, and Austin.

The CHAIRMAN. The committee will please come to order.

The first witness is Mrs. Brown.

STATEMENT OF MRS. LARUE BROWN (DOROTHY KIRCHWEY BROWN), DIRECTOR, NATIONAL LEAGUE OF WOMEN VOTERS, BOSTON, MASS.

Mrs. BROWN. Mr. Chairman and gentlemen, I represent the National League of Women Voters, which, as you know, Senator, has been interested in the problem of child labor since the formation of the league. It seems to us that it would be useful to review that interest briefly in order to explain our stand at the present time.

The National League of Women Voters was formed at about the time of the enactment of the suffrage amendment, in order to prepare women for citizenship and work in the fields in which women had particularly been interested. It was formed, therefore, immediately after the first Federal child-labor law had been declared unconstitutional, and during the time the second child-labor law, the child-labor-tax law, was actually in effect.

It therefore, in its earliest platforms, took no stand on the problem of Federal regulation of child labor, because that was already being done, according to the standards of that time, fairly satisfactorily.

It did, however, adopt in its very earliest platforms the standards of child welfare which had been adopted by the conferences held by the Children's Bureau at the close of the "Children's Year", so-called, the last year of the war. It adopted minimum standards of child welfare, which covered the whole field of child welfare, regulation, legislation, and so forth.

Those standards set up the age of 16 as the minimum age for leaving school to go to work. The National League of Women Voters, therefore, endorsed that general principle of a 16-year age for entering full-time employment and leaving school, in its very earliest day. I looked up this morning the early platforms of the National League of Women Voters, dating back to the year 1921, when the

first conventions were held, and found that in the first 2 years we endorsed the principles set up in the minimum standards. In the third year of the league's existence, which was the year 1923, we endorsed the Federal child-labor amendment, because, by that time, the Federal child-labor-tax law had been declared unconstitutional and it became obvious that the only way, so far as we could see it at that time, to work for national regulation of child labor was through the amendment.

So, from the year 1923 until the present time, the league has not only endorsed but worked actively throughout the country in all the States in which there are leagues for ratification of the Federal child-labor amendment, and has been perfectly consistent about that.

I mention that to make it quite clear that we have not in any sense weakened in our position in regard to the child-labor amendment. We have, however, during the past year, had a growing belief that it was well to consider new approaches to the problem of Federal child-labor regulation.

This has been due partly to the belief of many constitutional lawyers that the first Federal child-labor-law decision was one of the weakest of the decisions that were made during that period; and in view of the dissent of Mr. Justice Holmes, with which you are as familiar as we are, and which became a watchword for people interested in child-labor regulation because of the things it said about that problem, many people have felt for many years that the problem should be put to the Supreme Court again on that same basis.

Therefore, especially during the past year, the National Board of the League of Women Voters, together with its departments of child welfare throughout the country, have examined various proposals and have considered the various types of child-labor regulation that have been proposed.

It was not, however, until after the decisions under the Wagner Act, and the recent minimum-wage decisions, that the league actually endorsed the bill S. 2345, the bill introduced by Senator Barkley. Up to that time our own feeling had been sufficiently unsure as to what the Supreme Court would do that we had not made up our own minds as to what we would support.

The first week of May of this year the national board of the league, acting in accordance with directions of the national council, specifically endorsed the Barkley measure as the bill which the league would support.

The reason for that is twofold: In the first place, the league has worked consistently for a simple national form of child-labor regulation, has believed in it, and the leagues throughout the country and, I think, most of the other women's organizations—though I am speaking officially only for the league—were interested in the history of Federal child-labor legislation. We knew of the extraordinary success with which that first Federal child-labor law was administered under the Children's Bureau, and the remarkable economy as well as efficiency which had been developed under it; also the fact that they had developed, as was pointed out at the hearing the other day, a remarkable degree of cooperation with the States, which really built up the State standards so enormously. At that time not only were the States themselves working extremely

well in cooperation with the Children's Bureau but, in addition, many State laws were brought up to the standard established.

The CHAIRMAN. When you endorsed the bill you speak of, did you have before you any other bills?

Mrs. BROWN. We had considered, I think, all the other bills which were before Congress at that time.

The CHAIRMAN. Did you have them before you?

Mrs. BROWN. Yes; we did. I say we had them before us. We had a summary of every bill, I think—some 30 bills—which had been presented.

The CHAIRMAN. Who gave you the summary?

Mrs. BROWN. We keep in touch with all the legislation that comes in, of course, in our own office.

The CHAIRMAN. Did not the Department of Labor suggest that you endorse that particular bill?

Mrs. BROWN. No, Senator. What happened was this. I can speak personally of this, because I happened to be here at the time. I was in Washington at the time of the dinner in celebration of the twenty-fifth anniversary of the founding of the Children's Bureau. I had been extremely eager myself to see something of this kind tried, partly because my husband and other lawyers interested in constitutional law have been saying for a long time past that it was high time that this was put up to the Supreme Court again, to see what they would do with it, on the theory that with any broadening of interpretation a bill of this kind would probably be considered constitutional.

So a conference was held at that time with representatives of the National League of Women Voters, the Consumers League, and various organizations interested in the prevention of child labor, during which conference we consulted with the Children's Bureau.

The decision was reached at that time that if possible a bill should be introduced embodying the principles of the first Federal child-labor law, but bringing up the standards to the standards which were embodied in the N. R. A. codes, which apparently worked very successfully then.

As you remember, the first child-labor law was a 14-year law, and that is modeled almost exactly on that, except that it is a 16-year law.

The CHAIRMAN. You did not have any feeling, did you, that the passage of this legislation would prevent or retard the ratification of the child-labor amendment?

Mrs. BROWN. We considered that carefully and, personally, I should be very much opposed to it if I felt that it would. I think it will weaken only the support of those people who are already discouraged and not really working for the child-labor amendment—those who are ready to fall by the wayside anyway.

The CHAIRMAN. Those who are opposed to it anyway will simply use that as an argument.

Mrs. BROWN. Exactly.

The CHAIRMAN. If they did not use that argument, they would use something else.

Mrs. BROWN. That is absolutely true.

The CHAIRMAN. As a matter of fact, during the period of the N. R. A., we did have regulation of child labor. Did that tend to slow up or retard the ratification of the child-labor amendment?

Mrs. BROWN. At first there was an enormous drop in the agitation, and then, later, there was improvement in the work for the child-labor amendment, as it became obvious that the codes did not cause any serious disruption of industry, and that the more enlightened manufacturers really wanted it.

Before I forget it, I am empowered to file statements on behalf of several other organizations. In the first place, three different national women's organizations wish to support specifically S. 2345: The American Home Economics Association, the Council of Women for Home Missions, and the National Women's Trade Union League of America. Four other national organizations wish to support the general principles of adequate Federal child-labor legislation. They are: The national board of the Young Women's Christian Association, the National Council of Jewish Women, the National Federation of Business and Professional Women's Clubs, and the National Congress of Parents and Teachers.

May I file these statements with the committee?

The CHAIRMAN. Yes.

(The statements referred to are as follows:)

AMERICAN HOME ECONOMICS ASSOCIATION,
Washington, D. C., May 18, 1937.

STATEMENT OF THE AMERICAN HOME ECONOMICS ASSOCIATION IN SUPPORT OF S. 2345

The American Home Economics Association is a professional organization made up of some 12,000 individuals organized in the 48 States, District of Columbia, Hawaii, and Puerto Rico. The members include teachers, institutional managers, dietitians, social workers, and homemakers. The organization is supported by dues, by subscriptions to, and by advertising in its official magazine, and by the sale of other publications.

The object of the American Home Economics Association is the development and promotion of standards of home living that will be satisfying and developing to the individual and profitable to society. We believe that this objective cannot be furthered without the satisfactory development of the child and that the gainful employment of young children interferes seriously with their proper growth and development. For this reason, we have for many years worked for legislation which we believe would provide wise regulation of child labor, and in continuance of this policy we urge the passage of S. 2345.

The Council of Women for Home Missions, representing 21 national, Protestant, women's home mission boards, of both northern and southern churches, approves of Senator Barkley's bill (S. 2345) to regulate commerce with foreign nations and among the several States in the products of child labor.

SINA HODGIN STANTON,
Washington Representative on the Legislative Committee.

NATIONAL WOMEN'S TRADE UNION LEAGUE OF AMERICA,
Washington, D. C., May 17, 1937.

Hon. BURTON K. WHEELER,
Chairman, Interstate Commerce Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR WHEELER: The National Women's Trade Union League, as the representative of the organized trade union women in the United States, is extremely concerned with the elimination of child labor in this country. This has been one of the major planks in our platform since our organization was founded. We feel that the only really satisfactory way of controlling this problem is the passage of an amendment to the Constitution which will clearly give Congress the power to make necessary regulations. Pending the passage of this amendment, however, we feel that every effort should be made to pass a child-labor law which will meet constitutional restrictions.

We have considered the various bills on this subject which are before your committee and we take this opportunity to express our endorsement of S. 2345 the bill introduced by Senator Barkley. This bill seems to us the clearest statement of the standards we would have incorporated and it also seems to be enforceable.

Our study of the Wheeler-Johnson bill (S. 2226) has led us to the conclusion that the basis on which this bill is drawn would make the enforcement of the law very difficult. It would also necessitate the passage of State laws before the bill could be enforced which would be a time-consuming process, as only three States already have laws which meet the standards set up in the Wheeler-Johnson bill (of these the New York bill has yet to be signed by the Governor).

We earnestly hope, therefore, that the principles of the Barkley bill will be endorsed by your committee in a favorable report.

Sincerely,

MARY N. WINSLOW,
Legislative Representative.

NATIONAL BOARD YOUNG WOMEN'S CHRISTIAN ASSOCIATIONS
OF THE UNITED STATES OF AMERICA,
New York, N. Y.

STATEMENT IN SUPPORT OF FEDERAL LEGISLATION ON CHILD LABOR

Since the year 1919 the national Young Women's Christian Association, at its conventions composed of delegates from the local associations throughout the United States, has expressed its conviction that there must be legislative enactment if the abolition of child labor is to be accomplished.

In 1922 the national board, acting for the national association, adopted a resolution in favor of "law establishing a Federal minimum of protection", and joined with other national women's organizations in working for a child-labor amendment to the Constitution, authorizing Congress to pass such a law.

Since then the national association in convention, and its national board, have repeatedly reaffirmed the position that States alone are not able to bring about the abolition of child labor in the United States, and that through the Federal Government a minimum standard must be set up.

This position of the Young Women's Christian Association is not a theoretical one. It is based on experience of hundreds of young industrial girls who are in Young Women's Christian Association clubs throughout the country. Our first official action on child labor was based on the testimony given at a national conference of industrial clubs of the Young Women's Christian Association. We have given thorough study to various possibilities of improving conditions, such as State legislation, Federal legislation, voluntary action on the part of employers. Year by year the situation has been canvassed, with the same result, namely, that although much improvement can be brought about through other methods, child labor cannot be abolished without the aid of a Federal law establishing a minimum standard below which no State shall fall.

Since there is delay in the ratification of the child-labor amendment making possible a general child-labor law, we are interested in measures that offer control in certain fields. We believe that a Federal law, based on the interstate commerce power, to give immediate protection to children employed in manufacturing establishments, would be a step in the right direction. We would be interested in seeing at this time a law enacted which would bar from shipment in interstate commerce the products of any factory in which children under 16 are employed and a similar prohibition regarding employment of children under 18 years in highly dangerous occupation, such as mining, etc.

While such a law would not offer the complete protection which is needed, it seems to offer a genuine and enforceable remedy for one part of the child-labor problem.

NATIONAL COUNCIL OF JEWISH WOMEN, INC.,
New York, May 15, 1937.

The Honorable BURTON K. WHEELER, *Chairman:*

The National Council of Jewish Women has always had as its chief legislative concern the welfare of women and children. By resolution, at all of its triennial conventions, for the last 15 years, it has endorsed the child-labor amendment

and has consistently worked for its ratification in the States. At the same time, it has also worked for the highest possible standards in the States and would welcome Federal legislation to the same end.

Therefore, the National Council of Jewish Women respectfully urges this committee to report out and the Congress to pass the best possible bill to safeguard the protection and well-being of the children of our Nation.

HORTENSE B. LANSBURGH,
Member of the Board of Directors.

STATEMENT OF MRS. MARY T. BANNERMAN, CHAIRMAN, COMMITTEE ON LEGISLATION, NATIONAL CONGRESS OF PARENTS AND TEACHERS, WASHINGTON, D. C.

Since its organization in 1897, the National Congress of Parents and Teachers has been opposed to the exploitation of children in industry. It has throughout its history supported legislation to abolish child labor. It helped to secure the adoption by the United States Congress of the child-labor amendment and its State branches have assisted in securing ratification by State legislatures.

Since they have so recently been introduced, none of the bills now under consideration by the Senate Committee on Interstate Commerce has been studied or endorsed by the National Congress of Parents and Teachers. If, however, the situation with respect to exploitation of children in industry would be relieved through their enactment, the National Congress of Parents and Teachers would be deeply grateful.

The latest resolution on child labor adopted by the National Congress of Parents and Teachers and still in effect reads as follows:

"We reaffirm our stand in favor of ratification by the States of the child-labor amendment and the enactment of such Federal legislation as will give the necessary protection to child workers, and we urge that State branches work constantly for the improvement of State child-labor standards and State enforcement machinery, with special emphasis on the establishment of (1) a basic minimum age of 16 for employment; (2) a higher minimum age for the employment in hazardous occupations; and (3) minimum wage provisions for minors."

STATEMENT FOR THE NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.

(By Mrs. Opal D. David)

The National Federation of Business and Professional Women's Clubs has for many years opposed the exploitation of child labor. We have supported the campaign for ratification of the child-labor amendment, and we expect to continue that support. At the same time, we feel that recent decisions of the Supreme Court make this an opportune time for a fresh attempt in the field of Federal legislation which might accomplish the protection of a part of the child victims and at the same time indicate to persons who have been misled by hysterical propaganda the type of child-labor legislation that Congress would enact under the powers granted it by the child-labor amendment.

The large number of bills affecting child labor which have been introduced in this session of Congress seems to us an encouraging evidence of the growing opposition to the employment of children while large numbers of adults remain out of work. We have not endorsed any one of these bills, as we think there are good provisions in all of them, and we feel sure it is the purpose of this committee to report out a bill which combines the very best features of a number of bills.

We hope that the bill reported out by the committee will carry provisions which make it effective in every part of the United States without the necessity for further legislation on the part of the individual States. We also hope that special attention will be given to the problem of enforceability.

We appreciate very much the opportunity of presenting our views to the committee.

Mrs. BROWN. I should like also to make sure that it is in the record that Miss Frieda S. Miller, director of the division of women in industry and minimum wage, of the New York State Department of Labor, was here at the hearing day before yesterday, and was to speak on the subject of cooperation from the State point of view, with the Federal Government, in the enforcement of different types of Federal legislation, and specifically from the standpoint of how the first child-labor law worked from the State point of view. Miss Miller was unable to come back today, but has asked, and I think has already received, permission to file a statement on the rather technical administration of the law from the point of view of the States.

The CHAIRMAN. Did you examine the so-called Wheeler-Johnson bill?

Mrs. BROWN. I did.

The CHAIRMAN. Are you familiar with what Miss Abbott said the other day about the provisions with reference to work permits, and so forth?

Mrs. BROWN. Yes, Senator; I am familiar with that.

The CHAIRMAN. She called attention to the fact that on page 6 of this bill the standards that were set up were insufficient.

Mrs. BROWN. Yes.

The CHAIRMAN. Do you agree with that?

Mrs. BROWN. Yes.

The CHAIRMAN. Let me read this to you, Mrs. Brown, and then point out to you how entirely in error Miss Abbott was with reference to it.

It says (reading):

> In any such proceeding a copy of, extract from, or statement summarizing a record kept by, or document filed with, a government, church, or school authority establishing, or purporting to establish, the age or date of birth of a human being, whose labor is alleged to have been used in the manufacture of goods, wares, or merchandise shall be admissible in evidence when certified by or on behalf of such authority without further identification or authentication as prima facie evidence of the age of such human being.

That has nothing to do with the work permit at all, Mrs. Brown. Did you realize that?

Mrs. BROWN. Well, yes; but I think the point is that in order to have adequate child-labor law enforcement the work-permit system is essential, whatever else you have in this bill.

The CHAIRMAN. I understand that, and I am not quarreling with you in reference to that. But Miss Abbott pointed out that the standards set up here were entirely inadequate.

Let me call your attention to the fact that, as a matter of fact, this is only talking about the prosecution. In the event of a prosecution for the violation of the provisions of this act, these documents may be used as prima facie evidence on the part of the prosecution to show that the child is under the age specified, under the age of 16 years. It is a far stronger provision, as far as that is concerned, for the purpose of proving a case, than there is in any other bill that has been offered.

Senator BARKLEY. In that connection, Senator, I think that what Miss Abbott had in mind was that all these documents and statements that are to be used as prima-facie evidence were unsupported statements, and that they might not be reliable because of the fact that they are ex parte, and given by the person who wants to take advantage of them.

The CHAIRMAN. I do not believe that to be correct. That was the trouble with Miss Abbott's statement, Senator.

Let me call your attention to this fact. The trouble with Miss Abbott's statement was that she confused the idea, apparently, because these are not ex-parte statements. These are statements used by the prosecution.

Senator BARKLEY. They are statements that are given by a child or a parent, when application is made, or when they register for any purpose.

The CHAIRMAN. No; you are mistaken about that. That is the error into which Miss Abbott fell. It says:

In any proceeding—

that is, in any prosecution under this bill—

a copy of, extract from, or statement summarizing a record kept by, or document filed with, a government, church, or school authority establishing, or purporting to establish, the age or date of birth of a human being whose labor is alleged to have been used in the manufacture of goods, wares, or merchandise, shall be admissible in evidence when certified by or on behalf of such authority without further identification or authentication aas prima-facie evidence of the age of such human being.

In other words, you may have some difficulty in proving the age of the child in the prosecution, and consequently the prosecuting attorney can go to the school where the child has been in school, and he can get a certificate from the school teacher saying that when this child came to this school and started into school he said his age was so-and-so, or you can go to the church, or any Government agency, and obtain that record, and you can say, "Here is the record the parents filed, or the child filed, when this child went to school, or when it went to church, or when it was baptized", or anything else, showing this age.

You can offer that as prima-facie evidence. That would be prima-facie evidence that the child was under the age of 16 years, and the manufacturer would have to come in and dispute it and show that that was not correct.

Senator BARKLEY. That language would make such evidence prima facie not only on behalf of the prosecution, which was seeking to show that a child was under age, but it would be prima-facie evidence also on behalf of the defendants, where they undertook to show that the child was over age.

The CHAIRMAN. You could not, of course, make it prima-facie evidence on the part of the prosecution and not on the part of the defendant.

Mrs. BROWN. I think the point is, Senator——

The CHAIRMAN. Let me point out to you that, as a matter of fact, it is in here for the purpose of aiding that prosecution. A child goes to work, for example, when he is under 16 years of age, and his parents want him to go to work. The parents ordinarily would come in to defend it, saying that the child was over age. They are going to try to help the manufacturer, because they are the ones who are benefiting by the child working.

Mrs. BROWN. Yes.

The CHAIRMAN. So that these provisions were put in here, not with the idea Miss Abbott apparently had in mind but for the purpose of aiding the prosecution. This sort of a provision ought to be in any legislation, because of the fact that it aids the prosecution.

Mrs. BROWN. Yes; but if, at the same time, it aids the defense, it seems to me important——

The CHAIRMAN. How does it aid the defense?

Mrs. BROWN. If Senator Barkley's contention is correct, that prima-facie evidence for one is prima-facie evidence on the other side——

The CHAIRMAN. That is not aiding the defense.

Mrs. BROWN. Only if it weakens the customary enforcement of the child-labor law.

The CHAIRMAN. Of course, it cannot, Mrs. Brown. You ask your husband about it, and he will tell you, as a lawyer, that it cannot weaken it. The only thing it can do is to strengthen it.

When they go to put that child in school, they do not ordinarily lie about his age, do they?

Mrs. BROWN. Not ordinarily.

The CHAIRMAN. Ordinarily they do not lie about his age and say that he is older than he really is when they put him in school. When he is baptized they tell the truth about it. If they are going to lie about it, they are going to lie when they come into court and the manufacturer is being prosecuted.

Mrs. BROWN. Yes.

The CHAIRMAN. Now, if you can refute that and say, "Here is the statement you made when this child was baptized", or "Here is the statement you made when the child entered school", you can then get the birth certificate to refute their claims, and it is prima-facie evidence.

Mrs. BROWN. I think the point is that in a State that has proper child-labor law enforcement that has already been done, if the child is going to work under this work-permit system.

The CHAIRMAN. Not always.

Mrs. BROWN. In the States where the work-certification system is properly carried out, there is a very elaborate procedure. There is proof of age, which is supposed to be a birth certificate, if possible. If the birth certificate is not available, a baptismal certificate is accepted. The last thing that is taken as evidence is the statement of the family as to age.

All these other things are required first, if possible. In addition, there is the question of physical examination. Practically all the industrial States that have good enforcement provisions require, first, proof of age; second, proof of the grade requirement having been fulfilled in school; third, the physical examination to prove that the child is fit to go into the occupation for which he has a job promised.

In other words, he is not supposed to leave school just to play around in the streets; he is supposed to leave school only if he has a definite job; that is, during the period of his life for which a work permit is required. In Massachusetts, which, I regret to say, has not as good a child-labor law as many other States, the period from 14 to 16 is the required work-permit period. Also in Massachusetts I regret to state that the child must have finished only the sixth grade in school. He must be able to show satisfactory proof that his age is 14, and a physician, a school physician or other physician approved by the school committee, theoretically, must have examined the child. He must have the promise of a definite job and must

have the physical examination to prove that he is fit for that particular job.

Then, when he has all those things, the permit is issued, and is issued not to him but to the employer who is to employ him, and is kept on file by the employer during the period of his work in that particular factory. If he leaves or is discharged, the permit is sent back either to the school or given to the child, but any employer who hires that child must under the law have on file this work permit as part of his record to show that he is employing that child legally.

It is a pretty technical thing that has been worked out in practically every industrial State in the country in approximately the same form, although it varies enormously, of course, in the efficiency of administration, and particularly in the efficiency of the physical examination, which is the thing that is very hard to control unless it is done by a school physician under the auspices of a school committee to make sure that it is done adequately.

I think the point Miss Abbott wanted to make—and certainly the point I want to make—is that any Federal legislation should bear in mind this system and should try to see to it that it is strengthened, rather than by any chance not included specifically, because what all of us would want to do, obviously, is to strengthen the present State law-enforcement systems in the field of child labor, rather than try to set up anything new or different which would seem to conflict with or contradict them.

After all, so far as this particular paragraph is concerned, it is largely a matter of language and it would be a very easy matter to amend or change to include reference to State enforcement systems, and particularly to the work-permit system.

The CHAIRMAN. This particular paragraph to which Miss Abbott was objecting—or, at least, I took it she was objecting to it—as a matter of fact, should be in any child-labor law, in my judgment, because of the fact that I think it would be extremely helpful in the prosecution of violations.

Mrs. BROWN. In most State child-labor laws there is definite reference, of course, to the work-permit system, with all the details as to just exactly what the issuing process shall be, what the requirements for it shall be, and with the responsibility for keeping it on file resting on the employer. The actual enforcement consists of an inspector going to that factory and looking over the children who are there to see if there are any who appear to be of a suspicious age, and then saying to the manufacturer, "Where is So-and-so's work certificate?"

The CHAIRMAN. There is this question under any Federal law, in my judgment, without a constitutional amendment, and that is as to whether or not the courts would uphold the provision giving the Federal Government the right to issue any work permit. I think that would be questioned.

Mrs. BROWN. What was done before, as I think Miss Abbott explained to you—I do not remember exactly what she said, but my recollection, which dates back to that time fairly accurately, I think, is that in only five States was it necessary for the Federal Government to take any direct action at all. In all the other industrial States that really had a factory system the work-permit system had already been set up, and the factory inspectors of that State were, practically speaking, deputized by the Federal Government to act as inspectors for the Federal Government, insofar as their law corresponded to that of the Government.

Senator BARKLEY. In these work-permit systems in the different States, which vary, the burden of proof, as I understand it, in most of them is on the parent or person asking that the exception be made.

Mrs. BROWN. Yes.

Senator BARKLEY. Which would permit a child in school, for instance, to leave school and go to work, in case of the dire need of the parents, or their inability to support the family, and in case of other things that go to justify exceptions.

In that case, where they have to appear before some official, the burden of proof, as I understand it, really is on those who are seeking to bring about the exception, to show not only the age but the conditions under which the exception should be made.

Mrs. BROWN. Yes.

Senator BARKLEY. Yes. What you have in mind is that whatever legislation is enacted here should dovetail in with those systems so as to make them available to the Federal Government in an attempt to enforce the law.

Mrs. BROWN. Very few States now have what used to be called the "poverty permit." There used to be one in the District of Columbia, when I first lived here, and the judge of the juvenile court could permit a child to go to work if he thought the family was poor enough, which is a complete contradiction of the present-day theory that the person who needs help in a situation of that kind is the widowed mother who has to send her child to work at the age of 10, and so forth. In Massachusetts—and I am far from holding up Massachusetts as an example, because that law does not compare with the New York law, or the laws of various other States—for years we have had in our mothers' pension law a provision that if a child stayed in school until 16, the allowance given the mother should apply up to the age of 16, and not the age of 14. So that there is no excuse for a "poverty permit" on that basis in Massachusetts, and none is allowed. The only exception to the compulsory-school-attendance law is on the basis of feeble-mindedness or inability, and that exemption can be granted by the superintendent of schools. That is, at the present time, our only exception.

Senator BARKLEY. That is not a work permit.

Mrs. BROWN. That is not a work permit; that is a permit to leave school. Work permits are granted only on completion of the age requirement, the grade requirements, and the promise of employment, together with a specific physical examination to show that the child is fit to go to work on that job.

Then, of course, in practically every State there are provisions in regard to dangerous trades, some of which have been included in S. 2345. In Massachusetts we have a number of trades or occupations which are forbidden to children under the age of 18 or so.

Senator WHITE. You have indicated your approval of a particular bill here by number. I am not sufficiently familiar with the bills——

Mrs. BROWN. It has been referred to as the Barkley bill, the one which is purely an interstate-commerce bill.

Senator WHITE. Does your approval of that bill mean that you are hostile to the other bills?

Mrs. BROWN. It means, so far as the National League of Women Voters is concerned, that we have taken no stand on any other bill. We are not endorsing any other bill.

Senator WHITE. What I had in mind was this: Assume that the committee should work out some combination of the bills, or some compromise among the conflicting views embodied in the bills. What should the committee understand as to the position of your organization? Are we to understand that your organization would be hostile to that, or favorable to it?

Mrs. BROWN. I should say that I could not officially say that we are hostile to anything on which we have taken no actual action. I can, however, say that we considered the principles embodied in the Wheeler-Johnson bill—that is, the prison-made-goods theory—before we decided that we would prefer to endorse a straight interstate-commerce bill, on the theory that it was better to run the risk of the question of its constitutionaliy, it having been so close all the way along. It was one of the 5-to-4 decisions, and one of the decisions which I have heard many constitutional lawyers say they considered one of the worst of the 5-to-4 decisions. In view of these new developments in interpretation, especially under the Wagner Act, we felt that the chances were good enough so that it was better to work for a law which we thought was really more nearly the ideal than to approve one which we thought had complications and difficulties. From two different points of view, Senator, we consider the Wheeler-Johnson bill unsatisfactory. One is, that so far as organizations such as the National League of Women Voters, which I am representing, are concerned, a law that is fairly simple and easily understood is a much easier law to work for. We have all, for so many years, known the history of that first Federal law, how it was enforced and its effectiveness, that from the point of view of general endorsement and widespread understanding, it is an easier law and seems like a simpler law for our support and intelligent interest.

The other thing is that it means, from any standards we have been able to figure out, a far easier law to enforce if it is constitutional. Of course, we are facing that with either possibility. There is a question as to whether it is constitutional or not.

As I say, I am only permitted to speak in favor of the one which, from our point of view, seems to us simpler, and much more easy to enforce—probably much more economical to enforce, because of the experience in the past. As experience shows, the entire enforcement staff, if I remember rightly—though if Miss Lenroot is here she can correct me—was something like 51, of whom only 17 were actually inspectors, during the administration of the first Federal child-labor law, the others being clerks, stenographers, accountants, and so forth. It was a perfectly extraordinary demonstration of what proper Federal cooperation with an adequate enforcement agency in the State could accomplish.

The CHAIRMAN. If she did it with 51 people, she certainly accomplished a remarkable feat.

Mrs. BROWN. It was really a remarkable feat.

The CHAIRMAN. I doubt whether very many bureaus in Washington ever accomplished anything like that, particularly where they have had State organizations. If she built it up to only 51, it is a remarkable feat.

What length of time did that cover?

Mrs. BROWN. It was in effect actually for only a little over 9 months. But just the same, the entire principle had been worked out during that time. The point was that the law was a fair cross section of the laws of the good States, as we used to call them, States that had pretty good child-labor laws. Therefore it was not setting up a standard that was alien to the States, so that the result was that there was adequate cooperation, wihout difficulty from the States themselves.

In States like Massachusetts, New York, Indiana, and the States that had good, adequate, child-labor laws, practically nobody came into the State from the Children's Bureau, except at the very beginning, to suggest the methods of cooperation, and so forth.

Senator JOHNSON of Colorado. Is your organization in any way concerned with the fact that the Barkley bill does not in anyway affect home industrial work by children?

Mrs. BROWN. I am personally concerned, Senator, but we have taken no specific action in regard to that. We have felt, speaking——

Senator JOHNSON of Colorado. You passed it over?

Mrs. BROWN. We passed it over, in the sense that the important thing now is to set up a standard for the thing that seems clearest and easiest to do, and which would most likely be considered constitutional.

The fact is that the experience under the first and second child-labor laws, and also under the N. R. A. codes, showed that as soon as you set up a general standard there was inevitably a tendency on the part of the States to bring their own State laws and State enforcement up to that standard.

Senator JOHNSON of Colorado. Have you read section 4 of the Wheeler-Johnson bill?

Mrs. BROWN. Yes, sir; I have.

Senator JOHNSON of Colorado. Are you not convinced that that would also affect home industrial work, and prohibit it, and that home industrial work would have to be marked, just as the factory work?

Mrs. BROWN. I understand that is the purpose, Senator. I confess that I find very great difficulty in visualizing the actual technique of enforcement under that. It is an extremely complicated business. Even the very best of the industrial States, where they have very adequate law enforcement, find it difficult.

The actual process of how to enforce the labeling provisions, I think, is a very difficult idea. Do not misunderstand me. If there is any way in which it could be reached, it is obviously one of the evils which everyone of us would like to see met. I cannot conceive of anyone opposing it.

Senator JOHNSON of Colorado. We spent a great deal of time on that, and there seemed to be no way that the home industrial work could be reached under the approach in the Barkley bill, and that is one reason why section 4 is written as it is.

You just stated that you like the Barkley bill because it covers the interstate feature so well. I beg to differ with you on that ques-

tion. Under the Barkley bill a factory is prohibited from making any shipments in interstate trade whatever if a child works in or about that factory.

Mrs. BROWN. Yes.

Senator JOHNSON of Colorado. That child may not be engaged in making or helping to make, or working, in part or in whole, upon any article that goes into interstate trade, but under the Barkley bill that factory would be blacklisted and would not be permitted to ship in interstate trade.

Mrs. BROWN. Yes.

Senator JOHNSON of Colorado.. That is not strictly an interstate bill. You said that you think it is constitutional. I am afraid you would run into a lot of constitutional questions on that. I am not a lawyer——

Mrs. BROWN. Neither am I.

Senator JOHNSON of Colorado. I do not know anything about constitutional law but it seems to me that you are getting into a very difficult matter when you blacklist a factory simply because they have a child working there who, you admit, is not engaged in interstate production.

Mrs. BROWN. I am not completely familiar, as I think probably Senator Wheeler is, with the exact form of the code agreements under the N. R. A., but my impression is that the intention of the code agreements was to do exactly this.

Senator JOHNSON of Colorado. If you have an office boy——

Mrs. BROWN. Children should be in school up to the age of 16 That was the idea.

Senator JOHNSON of Colorado. Under the Barkley bill, if you have an office boy, or somebody outside the factory, he is not engaged in interstate production. It says "in or about."

Mrs. BROWN. Yes.

Senator JOHNSON of Colorado. So that if you have a child anywhere near that factory, in any capacity whatever, that factory is immediately blacklisted and not permitted to ship its goods in interstate trade. It takes quite a little imagination to think that the Supreme Court would call that interstate commerce.

Senator WHITE. I am not so sure, since the Wagner decision.

Senator JOHNSON of Colorado. I still think that they would not say that an office boy was engaged in interstate commerce.

Senator BARKLEY. Where a factory produces goods, part of which go into interstate commerce and part of which do not, it is always difficult to earmark in advance all the products, which are identical, that will go into interstate commerce, and those that will not. I dare say that no factory that does both a local and an interstate business can know at any given moment whether any given article, such as a pair of shoes, a suit of clothes, a hat, or anything else that is being produced, is going into interstate commerce. I do not know how you can ever determine that.

Senator JOHNSON of Colorado. What about the office boy, or the messenger?

Senator BARKLEY. Unless they do an interstate-commerce business exclusively.

Mrs. BROWN. Under the first Federal child-labor law, after which this was modeled, the phraseology was very much the same [reading]:

> That no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which within 30 days prior to the time of the removal of such product therefrom children under the age of 16 years have been employed or permitted to work.

They have similar phraseology about children of 14 in factories, quarries, mills, and so forth. In other words, it was a bill that was identical with this, except that the age is raised directly throughout to 16 instead of 14 for factories, and 16 for mines and quarries.

That is the first Federal child-labor law.

If there are no further questions, Senator, I think that concludes what I wish to say.

The CHAIRMAN. Thank you very much, Mrs. Brown.

Mrs. BROWN. Thank you, Senator.

STATEMENT OF FRIEDA S. MILLER, DIRECTOR OF THE DIVISION OF WOMEN IN INDUSTRY AND MINIMUM WAGE, NEW YORK STATE DEPARTMENT OF LABOR, REGARDING THE WHEELER-JOHNSON BILL

On the basis of my experience with the problems of administering the child-labor laws of New York State, I should like to submit a number of questions concerning the administrative problems which would be involved if the Wheeler-Johnson bill were passed.

The bill as it is now set up, provides three separate bases for the regulation of child labor, each one of them drawing its authority from the power of Congress to control interstate commerce. Its first section provides simply that goods shipped in interstate commerce shall be subject to the operation and effect of laws of the State into which they go, concerning the use of child labor. Its second section prohibits the transportation of goods into another State contrary to the child-labor laws of that State. Its third section makes it unlawful to transport goods produced with the use of child labor unless they are conspicuously labeled to show certain facts concerning them, more specially "the kind of work performed by children" on them. Section 4 makes it unlawful for a producer knowingly to transport goods in interstate commerce when child labor was used in producing them. And finally, a new section 5 introduces the basic provision of the Barkley bill; namely, that any producer in whose establishment child labor was employed within 30 days is prohibited from shipping goods in interstate commerce.

While section 5 introduces the basis on which the Barkley bill proposes to regulate child labor, there has been no move, up to this time at least, to introduce effective administration provisions which make the Barkley bill a simple, concise, and well-organized direction to the administrator as to how he is to accomplish its purpose. The Barkley bill incorporates those methods for controlling child labor which the experience of the States with child-labor laws have shown to be effective. It gives the Children's Bureau, which is the authorized administrative agency, the right to enter and inspect factories and other places where children might be employed, and the right to inspect records. Most important, it authorizes the Secretary of Labor "with the consent of the State agencies charged with the administration of State labor laws * * * [to] utilize such State and local officers concerned with the administration of these laws as he may find necessary." It provides that employment certificates issued in accordance with the law of the State shall be the basis of legal employment under this act, and provides for prosecution and for adequate penalties.

On the other hand, while there is some provision for penalties in the Wheeler-Johnson bill, there is no thought-out plan of enforcement, the initiative apparently being left pretty much to those who might be injured by the act and who would inform against it. There is no proper provision for certification of employed minors, which is at the basis of all proper administration of a

child-labor law. There is no provision for the use of the State agencies, which was the outstanding effective administrative technique of the earlier Federal child-labor laws.

Even the device on which the Wheeler-Johnson bill primarily relies, that of the labeling of goods, appears not to have been thought out. There is no indication as to whether the goods are to be labeled in terms of the law of the State where they are made or in the terms of the State to which they are consigned. Labeling in terms of the law of the State from which the goods come is not particularly useful in case of reshipment. Labeling, on the other hand, in terms of the place to which they are to go, brings up all sorts of practical difficulties. It means that the consignor of the goods must be prepared to affix 48 or 50 different kinds of labels. It raises a question of what to do concerning reshipment if the same goods, or a product incorporating the goods, are shipped further.

Finally, the Wheeler-Johnson bill accentuates the competitive disadvantage of the State with high child-labor standards, and sets State against State in the national markets. For example, if cotton textiles to be used in the manufacture of children's dresses, were ordered by a clothing manufacturer in New York and by his competitor in New Jersey, the New York man could not legally have access to the product of practically any of the southern mills. The Jersey man would stand a much better chance. The Jersey man could then ship his dresses without any invidious label on them into the markets of the majority of the States, but the New York manufacturer, who could not buy the goods of which these dresses were made, would have his product, produced in conformity with New York standards, competing with the New Jersey man's in practically the whole of the national market.

I have said in considerable detail what, after all, can be said very briefly—namely, that legislation of the Wheeler-Johnson type sets up barriers between the States, strengthens discentralizing as against centralizing forces and does this by means of cumbersome and ineffective enforcement provisions.

STATEMENT OF RALPH EMERSON, LEGISLATIVE REPRESENTATIVE, NATIONAL MARITIME UNION OF AMERICA, TO SENATE INTERSTATE COMMERCE COMMITTEE AT CHILD LABOR HEARING

Speaking in behalf of the National Maritime Union of America, and also in behalf of the American Radio Telegraphists Association and the Philadelphia Water Front Council, I wish to go on record as endorsing S. 2345 introduced by Senator Barkley. Whilst the other bills introduced on this problem were introduced with good intent, and have their good points, I feel that S. 2345 fills the present need.

Whilst we are entirely in favor of an ultimate constitutional amendment that will take care of the present existing evil in the child-labor field, we feel that there is quite a long fight ahead before this goal can be reached, and in the meantime the enactment of a bill, such as Senator Barkley's, would greatly alleviate a condition that is in serious need of such a remedy. We also feel that the enactment into law of Senator Barkley's bill would in no way interfere or hinder the progress and final passage of any constitutional amendment.

The seamen have always been opposed to the use of child labor in all fields of industry, and the American Radio Telegraphists Association have a bill in Congress now (S. 2407 and H. R. 5376) which would provide that their radio operators be 21 years of age or upward.

We also feel that with the present trend toward liberalism of the Supreme Court, that any law on the child-labor question that comes before them again will receive more favorable consideration before a decision is reached on it as to its constitutional status.

We therefore request that the Interstate Commerce Committee recommend favorably the passage of S. 2345, and we in turn will continue to fight for the enactment of a final constitutional amendment that will do away with the child-labor problem forever.

STATEMENT OF HENRY ROOT STERN, NEW YORK, N. Y.

Mr. STERN. Mr. Chairman, with your permission, as I am dealing largely with legal phases here, and for the sake of saving the time of the committee, may I be permitted first to present my statement, and then be questioned later?

The CHAIRMAN. Very well.

Mr. STERN. My name is Henry Root Stern. I reside at Manhasset, Long Island, N. Y., and am engaged in the practice of the law in New York City. I am a member of the law firm of Mudge, Stern, Williams & Tucker. I have been a member of the bar of the State of New York for over 30 years, specializing during that time in the trial of cases and arguments of appeals in the State and Federal courts. I also have been for many years a member of the bar of the Supreme Court of the United States, as well as of the United States District Court for the Southern District of New York, and of the Circuit Court of Appeals for the Second Circuit.

I have listened with a great deal of interest and, I may say, profit, to the testimony that has been taken thus far at these hearings. It seems to me that there has been substantial agreement on a number of points:

First. The exploitation of children is something to which all humanitarian-minded persons are opposed.

Second. The latest reliable figures on child labor, those prepared by the Department of Labor in 1930, indicate that 25 percent of all children gainfully employed were working in industrial pursuits. These figures, however, are not necessarily indicative of the present situation, since the operation of the N. R. A. codes tended to reduce the number of children employed in industry, and the trend since the suspension of those codes has been toward an increase in the number of children employed in industry.

Third. It is fair to assume that, except in a relatively few and unimportant cases, a substantial portion of the output of each of the factories employing child labor is transported out of the State in which it is manufactured through the facilities of interstate commerce to markets in other States.

Fourth. It is desirable for Congress to enact at this time legislation directed toward the abolition of child labor in industry, not because such legislation will necessarily amount to a complete solution of the child-labor problem, but because it is a step in the right direction which it is hoped will reduce the amount of child labor and thus serve a useful purpose until the ratification of an amendment to the Constitution is procured or in the event that attempts to secure raification are unsuccessful. Mr. Dinwiddie has indicated that even the most optimistic proponents of the child-labor amendment do not hope to secure its ratification by the necessary number of States prior to 1939.

I can agree on all of these points and in addition would like to make another point which I do not believe will provoke controversy and which has not thus far been brought out. That point is this: If Federal legislation be enacted which effectively operates to prevent the use of child labor on factory products destined for interstate commerce a necessary effect will be that child labor on factory products moving intrastate only will likewise be largely eliminated.

Even the person least conversant with manufacturing operations in this country today will appreciate that in those States whose laws make factory exploitation of child labor possible the local market and consumption is not great enough to make it economically practicable for the manufacturer to maintain one factory to supply that local market and another factory to supply the markets of other States.

It is the desire of this committee, I take it, to work out comprehensive an deffective legislation which has the greatest possible chance of meeting with a favorable reception by the Supreme Court if its constitutionality be questioned. It is in a spirit of utter sympathy with this purpose that I propose to comment on the various bills which are before the committee and on a number of the ideas which have heretofore been expressed by witnesses.

The several bills which the committee has before it employ one or both of two legislative approaches to the problem of child labor in industry. What might be termed the "State-aid approach" to the problem contemplates the removal of the insulation of the original package from child-labor goods shipped in interstate commerce so as to make State laws applicable thereto upon arrival of the goods within the State and a prohibition against the use of interstate-commerce facilities to frustrate State laws designed to protect free adult labor within the State from the cheap competition of exploited child labor without the State.

The other legislative approach assumes the existence of "original Federal power" to legislate on the subject and contemplates, in the first instance at least, a prohibition against the shipment in interstate commerce of the products of factories employing child labor without reference to the existence or nonexistence of any laws on the subject of child labor in either the State the shipment originates or in the State of its destination. The Clark bill utilizes only the "State-aid" approach. The Barkley bill utilizes only the "original-Federal-power" approach. The Wheeler-Johnson bill utilizes both approaches.

I fully agree with the idea heretofore expressed by both Senators Wheeler and Johnson that if Congress wants to pass comprehensive legislation dealing with industrial child labor both legislative approaches ought to be employed. I grant that until and unless the original Federal-power approach is effectively challenged on constitutional grounds there may be relatively few instances in which it will be necessary or advisable to prosecute child-labor exploiters for failure to observe provisions embodying the State-aid-approach theory.

I cannot see that this is a reason why the State-aid-approach theory should not be enacted into law, for certainly statutory provisions embodying that approach can do no harm but on the other hand have the advantage of giving enforcement agencies certain additional weapons of attack which Congress has power to provide and which may be the only weapons at the command of Congress in the event that the original Federal-power approach is declared invalid for the second time by the Supreme Court.

I do not agree with the views of two witnesses who apprehend that the presence in a statute of the State-aid-approach provisions will in any way prejudice the Supreme Court's consideration of the constitutionality of provisions adopting the original Federal-power approach.

As Senator Wheeler has pointed out, if it is desired to make a frontal attack on certain Supreme Court decisions through a test case based on the provisions of legislation embodying the original Federal-power approach, all that it is necessary to do is to frame an indictment based on those provisions only.

I think it is a mistake to assume that the presence in the law of provisions embodying a State-aid approach will in any way prejudice the chances for an impartial consideration by the Supreme Court of the constitutionality of the original Federal-power approach.

I think it can be fairly said that the constitutionality of the State-aid approach is well established. The latest decisions on the point are those of the Supreme Court in *Whitfield* v. *Ohio* (297 U. S. 431), decided in 1934, and *Kentucky Whip & Collar Co.* v. *Illinois Central Railroad* (57 Sup. Ct. 277), decided January 4, 1937.

These decisions make it abundantly clear that a State has the power to protect its free adult laborers against the cheap competition of child labor in other States through the enactment of nondiscriminatory legislation prohibiting the sale of child-labor products.

They likewise make it abundantly clear that Congress has the power to complement State legislation of this sort by a law removing the insulation of the original-package doctrine, prohibiting the use of interstate-commerce facilities to frustrate the declared State legislative policy, and requiring that child-labor goods offered for shipment in interstate commerce be appropriately labeled, whatever be the law of the State for which they are destined.

It must be recognized, on the other hand, that the decision of the Supreme Court in the case of *Hammer* v. *Dagenhart* (247 U. S. 251), decided in 1918, is a barrier to the successful application of any legislation embodying the original Federal-power approach to the problem which must be surmounted.

Personally, I would like to see the decision in *Hammer* v. *Dagenhart* overruled, and my feeling is that a carefully phrased—and, may I add, legally tactfully phrased—statute embodying the original Federal-power approach would stand an even chance of being upheld by the Supreme Court as presently constituted.

As has been pointed out, the decision in *Hammer* v. *Dagenhart* was 4 to 5. With the retirement of Mr. Justice Van Devanter there will remain on the bench but two of the nine Justices who participated in that decision. One of these two concurred in the decision and the other was numbered among the dissenters.

I should now like to take up the phraseology of the several bills before the committee. Perhaps I can cover Senator Clark's bill and the provisions of the Wheeler-Johnson bill embodying the State-aid approach in a few sentences before proceeding to an analysis of the balance of the Wheeler-Johnson bill and of the Barkley bill.

It seems evident that Senator Clark's bill was introduced, in the first instance, in tentative form, subject to later amendments, which have not been submitted. Among other things, he deliberately omitted to supply any minimum age for children who will be permitted to work. The provisions of the Wheeler-Johnson bill embodying the State-aid approach are somewhat more finished than

the corresponding provisions of the Clark bill, and embody a number of improvements which Senator Clark would probably agree with.

Coming, now, to the phraseology of provisions embodying the original Federal-power approach—because it would be difficult, if not impossible, in every instance to prove conclusively that child labor was utilized in the production of a particular article offered for shipment, the operative provisions of the Wheeler-Johnson bill which embody the original Federal-power approach—section 4 and the second and fourth sentences of section 6—and the Barkley bill seek in the first instance, at least, to bar all products of a factory employing child labor from interstate commerce, but with this difference: The Barkley bill makes the denial of interstate-commerce facilities to the manufacturer absolute notwithstanding the ability of the manufacturer to affirmatively prove that no child labor was employed to produce a particular shipment, whereas the Wheeler-Johnson bill denies the manufacturer using child labor the facilities of interstate commerce except in those instances when the manufacturer can prove that child labor was not used to produce a particular shipment.

The Barkley bill method of accomplishing this result, which was the method employed in the original Child Labor Act of 1916, involves what I regard as a somewhat serious constitutional objection not covered in the opinion in *Hammer* v. *Dagenhart*, because the Court ruled on a broader issue.

Take, for example, a factory—and Senator Johnson brought out that point this morning—which manufactures door hinges and file clips, and assume that in the case of the door hinges no child labor is used, whereas in the case of the file clips child labor may be used. If the door hinges were offered for interstate transportation, and if the record showed that these articles were concededly manufactured by adult labor, to my mind, a serious question of constitutional law would be presented as to whether the provisions of the act did not violate the due-process-of-law provisions of the fifth amendment to the Constitution.

I have in mind Supreme Court decisions of the type invalidating the New York statute fixing the maximum resale price of theater tickets, *Tyson* v. *Banton* (1927, 273 U. S. 418); the Washington statute forbidding the taking of fees for securing employment for others, *Adams* v. *Tanner* (1917, 242 U. S. 90); and other decisions of similar tenor, such as *Pennsylvania Coal Company* v. *Mahon* (1922, 260 U. S. 393), and *Fairmont Creamery Company* v. *Minnesota* (1926, 274 U. S. 1). This problem would be aggravated, of course, if the factory's output of file clips was not shipped in interstate commerce but destined for purely local consumption.

The spirit of these and other holdings is that an arbitrary wholesale prohibition of an entire business operation, only a part of which was affected by the evil aimed at, where satisfactory results could be achieved by more specific and less drastic regulatory measures, constitutes a deprivation of property without due process.

While I recognize that there are other decisions of the Supreme Court under which a broad restriction might be upheld, the line of demarcation is not clear, the Court having frequently stated that the question is one of fact and one of degree.

The question which this committee is called upon to consider is whether a prohibition addressed to specific goods made by child labor—a modified products regulation such as that utilized in section 4 of the Wheeler-Johnson bill—is not preferable to a prohibition addressed to the entire output of a factory, notwithstanding that child labor may not be used on all of its products—an absolute factory-quarantine regulation such as that embodied in the Keating Act and in Senator Barkley's proposed bill.

Senator BARKLEY. Are you considering the amendment offered by Senator Johnson to the Wheeler-Johnson bill?

Mr. STERN. No: I am treating the Wheeler-Johnson bill just as S. 2226. I am dealing with that bill alone.

Senator BARKLEY. It modifies the original bill to a considerable extent.

Mr. STERN. If it is adopted. I am just as much against that amendment offered by Senator Johnson as I am against this particular section of the Barkley bill. The one I am talking about here is S. 2226.

Senator BARKLEY. I do not want to interrupt you. I wondered if you had considered that.

Mr. STERN. Oh, yes.

I, for one, am not able to argue conscientiously that the absolute factory-quarantine regulation is the only method of dealing with the problem from the standpoint of enforceability so as to remove a statute framed on that theory from the constitutional objections I have just outlined.

In the first place, I believe that the modified products regulation employed in section 4 of the Wheeler-Johnson bill when supplemented by the presumptions established in section 6 and the other adjunctive provisions of the act is a practical and enforceable method of eliminating the evil aimed at and if I am right in this assumption something less than a total prohibition or absolute factory-quarantine regulation will suffice.

I think it fantastic to assert that the absolute factory-quarantine regulation is superior to the modified products regulation utilized in the Wheeler-Johnson bill on the theory—as suggested by one of the witnesses the other day—that the manufacturer could—

> readily produce witnesses to state that children have not been employed on a particular shipment.

Unless a manufacturer is one of those rare individuals who has detailed production records, the only testimony which he could produce would have to be founded either on perjury or on a basis for belief which would, in either case, be peculiarly vulnerable to cross examination by any competent prosecutor. Moreover, such an argument loses sight of the tremendous enforcement powers incidental to the modern grand-jury procedure which enables the Government to subpena books and records.

In the second place, not only is the modified products regulation enforceable as I have pointed out, but the absolute factory-quarantine regulation, far from being the only enforceable method, is itself subject to a peculiar weakness from the point of view of enforceability.

Undoubtedly the members of the committee, especially those of them who have had experience in trial work, will at once appreciate this weakness if I refer back to my example of the manufacturer of door hinges and file clips.

Under Senator Barkley's proposed bill this manufacturer may be tried in criminal proceedings for attempting to ship his door hinges in interstate commerce when the record will show as a conceded fact that no child labor was ever employed on any door hinges manufactured by him. The committee will undoubtedly appreciate the virtual impossibility of getting 12 jurymen to agree on a verdict of "guilty" under these or similar circumstances.

If in 6 months it becomes clear, as I think it will, that the modified-products regulation is feasible and enforceable, there will be no need for any further action. If, on the other hand, experience demonstrates that the modified-products regulation was unenforceable, then not only could a change to the factory-quarantine-regulation method readily be effectuated by a simple amendment, but the argument for the constitutionality of that method be immeasurably strengthened as a result of being then in a position to demonstrate factually to the Court that the other method had been tried out and found wanting.

Before I leave section 1 of Senator Barkley's bill I want to mention three other points:

The first of these is that I personally am in favor of covering the employment of children between 16 and 18 years of age in extra-hazardous industrial pursuits, as Senator Barkley attempts to do, provided that the problems developed during the course of Miss Lenroot's testimony relating to definition of the field of extra-hazardous employment can be worked out by suitable language.

The second of these points relates to that language in the first section of Senator Barkley's bill which ties up child labor in the factory to the time the goods leave the factory and not to the time the goods are offered for shipment. After all, Senator Barkley's bill and all of the bills before the committee are criminal statutes and are subject to construction in favor of the accused.

I take it that under the Barkley bill a prosecutor would first have to lay a foundation by showing that particular goods were shipped or delivered for shipment in interstate commerce on a particular date and that these particular goods left the factory within a certain specified time period before evidence showing when and to what extent the factory employed child labor would be competent or relevant and that upon failure to relate child labor in the factory to the date the goods left the factory, the prosecutor's case would fall.

From what I know of industry, production, and merchandising, particularly in those industries where the demand for goods is seasonal, it seems to me that it would be hard to prove when goods left the factory or mine in those instances where there had been an intermediate warehousing or where the article was a fungible such as coal, that had been stock piled. I think, frankly, that an enforcement problem is unnecessarily courted by relating the employment of child labor to the time the goods leave the factory rather than to the time the goods are offered for shipment, the Wheeler-Johnson bill method.

The last of these points is that Senator Barkley's bill is limited to the employment of children in "factories" and does not cover direct or indirect employment of children in industrial pursuits outside of the factories proper. I think in this respect the broader language of section 4 of the Wheeler-Johnson bill is preferable, particularly if it be conceded that some attempt ought to be made to cover industrial homework.

Miss Abbott went into the question of enforcement machinery at some length. I understood her to say that three powers expressly granted to the enforcement authorities by the Barkley bill were found to be very useful in connection with the administration of the original Child Labor Act of 1916. These powers are, respectively, the power to utilize existing States' employment-certificate systems where they exist, the power to extend to the manufacturer, at his request, the facilities of a Federal employment-certificate system when State systems have not been established, and the power to enter and inspect factories and their production and employment records.

I certainly see no objection to expressly authorizing the Labor Department to utilize reliable State employment-certificate systems and records whenever desirable, though my guess would be that express language is not necessary to confer that power.

Indeed, I would go even further and make these and other reliable official records relating to the age of employed children prima-facie evidence as do the provisions of the Wheeler-Johnson bill—provisions, by the way, that can be taken advantage of only by the prosecutor and not by the defense, as Miss Abbott seemed to think.

If the succeeding sentence be read, that will make it clear.

Senator BARKLEY. I am sorry I cannot hear the rest of your statement. I have to go to the floor of the Senate. But I will read it.

Mr. STERN. Thank you very much, Senator.

I do not question that grants of power to set up a Federal employment-certificate system and to enter and inspect factories might be exceedingly useful to enforcement authorities. It seems to me, however, that those interested in enacting child-labor legislation embodying the original Federal-power approach should not lose sight of the fact I have heretofore mentioned, namely, that there is a decision of the Supreme Court which it has to either overrule or distinguish before legislation of this type will be finally effective and that we should not forget that the Court in that case not only held that Congress had no power to equalize competition between the various States by requiring uniform employment conditions as a prerequisite to the use of interstate-commerce facilities, but also held that the original Child Labor Act constituted an unwarranted invasion by the Federal Government, through regulation and otherwise, into the field of a State's police power. Because it seems to me that an express grant of an inspection right and of authority to set up an employment-certificate system are patently subject to criticism on the ground that they constitute an attempt, on the part of the Federal Government, to exercise local State police power and would be difficult for the Court to justify if it desired to hold constitutional a statute framed on the theory of original Federal power, I personally feel that it would be well to avoid incorporating any express language on these points into legislation if it is not strictly necessary, at least until such time as a fair trial of other methods of enforcement demonstrated the indispensability of these two powers.

After all, a Federal employment-certificate system and the power to inspect factories is valuable only because it enables enforcement authorities to detect violations of the law. It seems to me that the

Federal Government already has at hand a method of procuring this information which is complete and effective.

I refer to the information already collected and continually being collected in connection with the enforcement of the Social Security Act, which information the Wheeler-Johnson bill makes available to enforcement authorities.

At the present time practically every industrial employee, whether he be child or adult, numbering in all over 27,000,000, has filed with the Government an application for an account number which, in addition to his own name and address, sets forth the name and address of his employer, the date of his birth subject to verification by the Government, the place of his birth, and his parentage.

I have the blanks here. Those words are printed right in: "(Subject to * * * verification)."

Furthermore, every industrial employer of the country has filed with the Government an elaborate statement setting forth, in addition to his name and address, a detailed statement of the nature of his enterprise, the type of employment offered, and the kind or kinds of products he manufactures. The employer is required to supplement this information quarterly with pay-roll reports showing the account numbers of his various employees. In other words, there is already available to the Federal Government for the enforcement of child-labor legislation complete information on industrial employers and employees which would only be duplicated, in large part and perhaps not as comprehensively, through the operation of a Federal employment-certificate system and by information resulting from an inspection of factory records by Department of Labor investigators.

The utility of this information, it seems to me, is not confined to checking up on probable violations after their existence has been detected. On the contrary, enforcement agencies should be able to utilize applications for account numbers by under-aged minors to detect violations in the first instance.

I might add that applications for account numbers contain enough information in addition to the age and place of employment to make it possible for the Labor Department to vertify that information with a minimum of effort—or at least with no more trouble than it takes to verify ages of applicants for employment certificates.

I mention the Social Security Act information only because it impresses me as about the most complete industrial census for labor-law purposes that can be imagined. I believe that reasons of economy dictate the wisdom of its uses to the greatest possible extent. I further believe that enforcement of child-labor laws through use of Social Security Act information ought to be tried before any grant of power to inspect factories or establish an employment-certificate system is made, particularly since such a grant of power may well prejudice the chances of the Supreme Court upholding a child-labor law.

I would like to conclude by commenting upon the enforceability of those provisions of the Wheeler-Johnson bill, which embody the State-aid approach. It must be remembered that there is not very much profit in using child labor. In this respect the situation is different from a legislative standpoint than the liquor situation or

the convict-labor situation. There is a large margin of profit in bootleg liquor and convict labor, large enough to make violations of the law a good gamble. I have talked to a number of manufacturers, none of them employing child labor, by the way, and they tell me that the slight margin of profit in child labor will be more than wiped out by the unpleasant alernative of heavy penalties on the one hand, or the combination of a loss of important consumer markets and the unpleasant publicity involved in branding, on the other hand.

A labeling provision such as the Supreme Court recently upheld automatically brings the carriers into the fold as enforcement agents. They are not going to incur heavy penalties merely to accommodate a shipper who wishes to violate the law. Competitors of the child-labor user will be interested in detecting law violations and informing proper authorities.

I am not concerned about State enforcement of State antisales statutes. The enforcement of complementary State and Federal laws will take place in the State where the shipment originates, not in the State of its destination, and will consist of Federal court prosecutions for failure to label or for improper labeling. One or two successful prosecutions ought to be sufficient to bring all of the recalcitrant manufacturers into line.

I am sorry I took so long, but I wanted to cover all the phases.

The CHAIRMAN. Are there any questions?

Senator AUSTIN. This question relates to the policy of undertaking to extend the prohibition into the home, and bring families under the control of the Federal Government. You seem to approve that as a policy; do you?

Mr. STERN. It has already been testified to, Senator, by certain of the witnesses here—I think Miss Abbott and Miss Lenroot, of the Children's Bureau—that there was a great deal of industrial home-work for children, even in States where State laws ban that. They would send children across the State line, and also the products of children would be smuggled across the State line.

I am not for any undue interference with parental rights in the home, in the ordinary sense, but I think where a sweatshop manufacturer, fearing to have the children come to a factory and work, distributes the work secretly around, and has the children work in the home, that is a very bad thing, where it is commercially exploited.

Senator AUSTIN. If you are going to have a law to attack that thing, do you not think it is more likely to be enforceable if you define the thing you are aiming at, than if you leave it so that enforcing agencies may pry into private affairs of the household and create the impression that the Federal Government is tyrannical in its interference with private life?

Mr. STERN. I think that argument is another argument in favor of what I have been contending here with respect to the Barkley bill. I think the Barkley bill goes too far in providing for the right of visitation and search. That is a thing that I think is going to work out very badly.

If you refer to the Barkley bill, you will see that the Chief of the Children's Bureau, under section 2 (b)—

or any persons designated by him, pursuant to the regulations issued under the preceding subsection, shall have authority to enter and inspect at any

time factories or other places in which articles are produced or held for interstate commerce and to inspect records relating to the employment of minors or to the shipment of articles therefrom, and to make periodic reports of such inspections.

I think that that section, if I may phrase it colloquially, just about slaps the Supreme Court in the face in connection with the Dagenhart case, if you are going to ask them, in effect, to draw back from the Dagenhart case. The picture conjured up of Federal inspectors coming down from the Children's Bureau and being planted all over, coming right into the factory and being able to go through a man's records without any preliminary proof that he has child labor, and without any search warrant, will be very much resented.

Senator AUSTIN. You used your right to answer my question to make an argument about a thing which I did not ask about.

Mr. STERN. I beg your pardon. I misunderstood you.

Senator AUSTIN. I agree with you just the same. I do not believe in this inquisitorial power by a strong centralized government, and the interference with and usurpation of the police powers of the States. I assent to what you have last stated.

However, I should like to have an answer to the question I asked you, which is this: Do you not think, as a matter of good legislation, that has a prospect of being enforced, it would be better to limit by definition the scope of that prohibition respecting labor in the home, so that it would apply only to those cases you mention, namely, where work is really distributed from a central point, in order to escape and evade some other thing, and it becomes really a factory system, spread out among the houses of the community? Do you not think there is more wisdom in attempting to define that than to leave it so that the law, if it is enacted, is subject to the very criticism which you make?

The CHAIRMAN. Let me call attention to section——

Senator AUSTIN. I want his answer on that.

Mr. STERN. I would be perfectly willing to see in this bill—I say "willing"; I mean I would welcome in this bill any clear, simple definition.

Take the New York factory law. I have not the definition in mind at the moment, but industrial homework has been very carefully defined. I will check that provision. I had it in mind before in connection with another bill in New York, but I have not looked at it recently.

I am inclined to think that you could take such a definition as that and put it in this bill, and I think there might be something gained by it, to avoid any misuse of the power of inspection.

I am sorry I did not get your point before.

Senator AUSTIN. It was probably due to the obscurity of my question.

Mr. STERN. No; I do not think so; it was my fault.

Senator JOHNSON of Colorado. The Wheeler-Johnson bill does not say anything about home industrial work. It simply places the commodities made by home industrial work in the same category that you place the factory, the mill, the refinery, and all those named objectionable places where such goods are made; that is, we prohibit

in interstate commerce goods made by children, and we do not say anything about the home industrial work. We do not say anything about the factories. We prohibit it wherever it is made.

The CHAIRMAN. Section 4——

Senator AUSTIN. My question is raised by section 4. Section 4 raises the question in my mind. If the product made by the child in the home must be labeled in order to be shipped in interstate commerce, if the failure to so label it results in prosecution, and if, for the purpose of discovery as to whether that thing is being done or not in a home, you are going to snoop into the home from Washington and keep an eye on the keyhole of the house, then I am opposed to that thing.

Senator JOHNSON. We have not any such provision for inspection in the home.

Senator AUSTIN. I think it ought to be fixed so that it cannot be so interpreted.

The CHAIRMAN. Section 4 of the Wheeler-Johnson bill provides [reading]:

It shall be unlawful for any person who has manufactured, produced, or mined goods, wares, or merchandise in any State or Territory, wholly or in part through the use of child labor, on or after January 1, 1938, knowingly to transport or cause to be transported, in any manner or by any means whatsoever, or aid or assist in obtaining transportation for or in transporting such goods, wares, or merchandise in interstate or foreign commerce.

That is to prevent these people, as I understand it, in New York and some of these other States, from sending these goods into some home, for instance, in a neighboring State, and having them manufactured in the house, and then sent back again, so as to get around the State laws.

Had you finished, Senator?

Senator AUSTIN. I am through.

The CHAIRMAN. I think that is all.

Mr. STERN. I just wanted to add one or two things.

As regards what I said about these Social Security records, I have these forms here. They are available, naturally, to any Senator, but, for the convenience of the committee, I should like to leave these forms, because they are of intense interest.

The CHAIRMAN. I think it would be well to give them to the reporter to have them inserted in the record.

Mr. STERN. They are very elaborate, and when run through accounting and tabulating machines that are in common use now, you can segregate these forms with comparative rapidity. You can segregate them down to XYZ corporation in Florida, or Georgia, or whatever the State may be. I am not casting aspersions on any particular State, but you can do it very quickly, and right away.

You have available to you the number of children under 16 working in that factory. You can do all this from Washington, as a matter of fact; you do not have to send a labor inspector down there. You know their product. It is already stated in this information. The question is, Are they labeling the goods? Are they sending the goods, for example, into New York State, or some other State that has adopted a ban against the sale? You can learn the

facts from the prosecuting attorney in the particular district of that State. You have almost a prima facie case from these records, and the Treasury Department is bound, sooner or later, to verify and check up on all these things, because, if they overstate their age—and that is why they put in the words "(Subject to * * * verification)"—they are taking advantage of the Federal Government and getting Social Security benefits earlier than they would otherwise, and paying less out of their salary. That is why the Treasury Department put in the words "(Subject to * * * verification)" and gets the parents' full names, as well as the place of birth, so that it can be verified. It is the finest system I ever saw.

The CHAIRMAN. You have overlooked, however, the fact that any bill which is not drafted by some of these Brain Trusters is objected to. Senators are not supposed to draft their own bills any more.

Mr. STERN. I beg leave to be excused from answering that.

Thank you very much.

(Mr. Stern submitted the following material for inclusion in the record:)

Form SS-5
Treasury Department
Internal Revenue Service

U. S. SOCIAL SECURITY ACT

APPLICATION FOR ACCOUNT NUMBER

Print name

1. _____ _____
(Employee's first name) (Middle name) (Last name)
(Married women, give maiden first name, maiden last name, and husband's last name)

2. _____ 3. _____
(Street and number) (Post office) (State)

4. _____ 5. _____
(Business name of present employer) (Business address of present employer)

6. _____ 7. _____
(Age at last birthday) (Date of birth (month) (day) (year) (Subject to later verification)

8. _____
(Place of birth)

9. _____ 10. _____
(Father's full name) (Mother's full maiden name)

11. Sex: Male_____ Female_____ 12. Color: White_____ Negro_____
Other_____
(Check (√) which) (Check (√) which) (Specify)

13. If registered with the U S Employment Service, give number of registration card_____

14. If you have previously filled out a card like this, state_____
_____
(Place) (Date)

15. _____ 16. _____
(Date signed) (Employee's signature, as usually written)

Detach along this line

To employee: Read carefully all instructions in this folder before starting to fill out form. Treasury Regulations require completion and return of this form to your local postmaster not later than December 5, 1936.

INSTRUCTIONS FOR FILLING OUT FORM

Item 2.—Enter street and number of place in which you reside, or the R. D. route number if you live in the country. If neither is available, enter your post-office box number if you have one. If there is no such means of identifying your home, describe as well as possible its location by giving name by which the area is usually known.

Item 3.—Enter name of city and State in which you reside. If you live outside the city or village limits, enter the name of city or village from which your mail is delivered.

Item 4.—Enter full business name of your present employer. It is important that you give the employer's business name and not the name of some individual or official of the concern.

Item 5.—Enter the business address of your present employer. It is important that you show street and number, as well as city and State. Do not give home address of employer.

Item 8.—Enter city, county, and State of birth. If you were born outside the limits of any city or village, describe area as accurately as possible, giving the name by which it is usually known. Always give the name of county and State. If foreign born, enter the name of country of birth in space provided for State. If other identifying location is available, enter in space provided for county.

Item 12.—If you are either white or negro, place a check mark (√) in the proper space. For other than white or negro, write out color or race to which you belong in the space provided. Typical examples of other color classifications are: Mexican, Chinese, Japanese, Indian, Filipino, etc.

Item 13.—If you are registered with United States Employment Service, National Reemployment Service, or State employment offices, either for the purpose of obtaining employment or to obtain a better job, enter registration number assigned to you by such organization.

Item 14.—If you have previously made application for a Social Security account number, enter the place (city, county, and State) and date (month, day, and year) of filing application. This should be done regardless of whether or not you have received your account number card. This is important in order that not more than one account number will be assigned to you.

Item 16.—Enter your signature as it is usually written—not necessarily the way it appears on the first line of the form. If your usual signature is written with only middle initial, or if first name is abbreviated, sign application in that same way.

If you cannot write, have someone fill out the card for you.

If you are unable to sign your name, you should make your mark (an ×) on left side of the line provided for signature, in the presence of two witnesses who can write. If possible, the witnesses should be persons who work with you. The witnesses must sign their names in the remainder of space provided for signature.

If these instructions are not clear, consult your local postmaster.

GENERAL INSTRUCTIONS

Do not fill out or file this application for an account number if you are now 65 years old or will reach 65 before January 1, 1937.

If handwritten, answers should be printed plainly in ink. If possible, use a typewriter. Do not use pencil.

Completed application must be returned to your local postmaster not later than December 5, 1936.

There are five ways in which this application may be returned to the local postmaster, and in no case is it necessary to prepay postage:

1. It may be handed to your employer.
2. It may be handed to any labor organization of which you are a member.
3. It may be handed to your letter carrier.
4. It may be delivered to the local post office in person or by messenger.
5. It may be mailed in a sealed envelope addressed as follows: Postmaster, Local.

When an account number has been assigned, a card certifying that an account has been set up in your name will be returned to you, through the channel used in sending your application to the postmaster. Upon receipt of that card, bearing the date of issue, it should be immediately signed by you. This is important since your signature, as usually written, is required to validate the card.

If the card is handed to you by your employer, he will keep a record of your account number. If it is received by you from some other source, you should immediately inform your employer of your account number in order to complete his record.

You may have your account number changed at any time by applying to the Social Security Board and showing good reasons for a change.

You are required to file this application at this time, unless your work falls in one of the following excepted classifications or groups:

1. Self-employment;
2. Employees of the railroad industry who are subject to the Carrier's Taxing Act approved August 29, 1935 (49 Stat. 974);
3. Agricultural labor;
4. Domestic service in a private home;
5. Casual labor not in the course of the employer's trade or business;
6. Service performed as an officer or member of the crew of a vessel documented under the laws of the United States or of any foreign country;
7. Service performed in the employ of the United States Government or of an instrumentality of the United States;
8. Service performed in the employ of a State, a political subdivision thereof, or an instrumentality of one or more States or political subdivisions;
9. Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In case of doubt, fill out card

INFORMATION OF GENERAL INTEREST

This is an application for the assignment of a number to your Social Security account. It is necessary that you have one of these numbered accounts for an accurate recording of your social security rights under Federal and State laws.

The Federal old-age benefits system provides for retirement payments from the Federal Government to qualified persons beginning at the age of 65. It was established by the Social Security Act and goes into effect on January 1, 1937. Its purpose is to bring to those persons employed in the broad fields of commerce and industry increased assurance of an independent old age. The system is administered by the Social Security Board, Washington, D. C.

Benefits are based on the wage record of the individual and are of three types: (1) Monthly benefits at 65, (2) lump-sum payments, and (3) death benefits.

These benefits are based on total wages for work done in this country after December 31, 1936, and before a worker becomes 65 years of age. This includes every kind of work for an employer with a few exceptions. The main exceptions are listed on page 3 of this folder. Wages of not more than $3,000 a year from any one employer will be added together to make up the total wages. Every time the word "wages" is used in this folder it means wages as explained in this paragraph and not wages generally.

Monthly benefits will range from $10 to $85 a month and will begin to be paid on January 1, 1942. To qualify for this type of benefit an individual must be 65 years old, his total wages must be $2,000 or more, and he must have earned wages for at least 1 day in each of 5 different calendar years.

Lump-sum payments will be made to individuals who reach the age of 65 but do not qualify for monthly benefits. The amount paid them will equal 3½ percent of their total wages.

Death benefits will be paid to the estates of individuals who die before drawing monthly or lump-sum benefits equal to 3½ percent of their total wages.

In order that old-age benefits can be paid by the United States Treasury, it is the responsibility of the Social Security Board to determine the total wages of those individuals who will be entitled to receive benefits. Accordingly, the Board must keep an account of the individual's wages. This application form is being distributed to employees through the Post Office Department in order that these individual accounts may be set up.

It is in your own interest, as a possible recipient of Federal old-age benefit payments, to apply promptly for the setting up of a Social Security Account in your name, and the assignment of a number to it. Therefore read the instructions carefully and fill out the application at once.

Only one number may be assigned to your account. Do not fill out this application if you previously have made application or already have a numbered account.

Employee's first name	Middle name	Last name	For office use only
Street and number			
Post office		State	
Age at last birthday	Date of birth (subject to verification)		
		Place of birth	
Father's full name			
Mother's full maiden name			

SEX: Male -- Female ---- (Mark (X) which) COLOR: White -- Negro -- Other ---------- (Mark (X) which) Specify

Typed by ---------- Reviewed by ---------- Date issued ----------

Office Record

U. S. SOCIAL SECURITY ACT

OA-702

[Coupon attached to right of above]

ACCOUNT NUMBER

Has been Established for

Date of issue

Employee's first name	Middle name	Last name	For office use only
Street and number			
Post office		State	
Age at last birthday	Date of birth (subject to verification)		
		Place of birth	
Father's full name			
Mother's full maiden name			

SEX: Male -- Female ---- (Mark (X) which) COLOR: White -- Negro -- Other ---------- (Mark (X) which) Specify

Typed by ---------- Reviewed by ---------- Date issued ----------

Office Record

U. S. SOCIAL SECURITY ACT

OA-702

[Coupon attached to right of above]

ACCOUNT NUMBER

Has been Established for

Date of issue Employee's signature

[On back of coupon]

Keep this card. It shows the account number used in keeping records of your Social Security Benefit rights under Federal and State Laws. Keep a record of this number as you might lose the card. Mention the number in all letters regarding your account.

Address inquiries concerning Unemployment Compensation (if there is a law in your State) to the State agency administering such law. Address inquiries concerning Federal Old-Age Retirement Benefits (not State Old-Age Assistance or Pensions) to the nearest office of the Social Security Board.

SIGN THIS CARD IMMEDIATELY AND REPORT THE NUMBER TO YOUR EMPLOYER.

Pat. No. 1,904,650

TO OWNER OR HIS OFFICIAL REPRESENTATIVE AT THIS ESTABLISHMENT

Read carefully the instructions on pages 1 and 3 before starting to fill out form. If the instructions are not clear, consult your local postmaster.

The information called for on the attached form is required under Treasury regulations for use in establishing basic records under the Social Security Act.

It is to the mutual interest of employers and the Federal Government that this form be promptly completed. Under the Treasury regulations, completed form must be returned to your local postmaster not later than November 21, 1936. It may be handed to your letter carrier, or it may be delivered to the local post office in person or by messenger, or it may be mailed in a sealed envelope, addressed as follows: Postmaster, Local. In no case is it necessary to prepay postage.

The prompt completion and return of the form is particularly important because it will be used in connection with the work of assigning account numbers to your employees, which will follow shortly.

You will be officially notified, in due course, of the identification number assigned to you.

INFORMATION OF GENERAL INTEREST

The Federal old-age benefits system provides for retirement payments from the Federal Government to qualified persons, beginning at the age of 65. It was established by the Social Security Act and goes into effect on January 1, 1937. Its purpose is to bring to those persons employed in the broad fields of commerce and industry increased assurance of an independent old age. The system is administered by the Social Security Board, Washington, D. C.

Benefits are based on the wage record of the individual and are of three types: (1) Monthly benefits at 65, (2) lump-sum payments, and (3) death benefits.

These benefits are based on total wages for work done in this country after December 31, 1936, and before a worker becomes 65 years of age. This includes every kind of work for an employer, with a few exceptions. Wages of not more than $3,000 a year to an individual from any one employer will be added together to make up the total wages of that individual. Every time the word "wages" is used below it means wages as explained in this paragraph and not wages generally.

Monthly benefits will range from $10 to $85 a month and will begin to be paid on January 1, 1942. To qualify for this type of benefit an individual must be 65 years old, his total wages must be $2,000 or more, and he must have earned wages for at least 1 day in each of 5 different calendar years.

Lump-sum payments will be made to individuals who reach the age of 65 but do not qualify for monthly benefits. The amount paid them will equal 3½ percent of their total wages.

Death benefits will be paid to the estates of individuals who die before drawing monthly or lump-sum benefits equal to 3½ percent of their total wages.

In order that old-age benefits can be paid by the United States Treasury, it is the responsibility of the Social Security Board to determine the total wages of those individuals who will be entitled to receive benefits. Accordingly, the Board must keep an account of the individual's wages. Employers will be informed in due course as to the wage reports which will be required for this purpose.

INSTRUCTIONS FOR FILLING OUT FORM

In answering questions 1 through 6, it is important that the information entered apply to a specific establishment, that is, each place of employment. If handwritten, answers should be printed plainly in ink. Answers should be typewritten, if possible. Do not use pencil.

Item 2. *Business name of this establishment.*—Enter name by which this local establishment is known to the public and which is used by the concern in its correspondence and in issuing statements. If this establishment is owned or controlled by another bearing a different name, enter the name actually used by this local establishment.

Item 5. *Describe fully the exact nature of business.*—Indicate the primary type of activity, whether manufacturing, wholesale trade, retail trade, personal services, etc. Also, the products manufactured, the merchandise sold, or the services rendered. (Typical examples: Manufacturer—radios; manufacturer—

refrigerators; wholesaler—meats; wholesaler—drugs; retailer—gasoline; retailer—men's wear; retailer—grocery store; service—shoe repairing; service—barber shop; mining—coal; professional—lawyer; professional—physician; etc.)

Item 6. (*a*) *If a manufacturing concern, state principal products.*—List in the order of their importance products manufactured.

(*b*) *If a nonmanufacturing concern, state principal products or services sold.*—List in the order of their importance goods sold or services rendered.

Item 7. *If this establishment is a branch or a subsidiary company, give name and address of headquarters.*—Regardless of whether this establishment is a branch plant, office, or store, or whether it is a unit of a chain or other multi-unit organization, the name and address of the headquarters should be indicated.

If space provided for the answers is inadequate, a separate sheet should be attached. The answers appearing on such separate sheet should bear the corresponding numbers appearing on the form.

Form SS–4
Treasury Department
Internal Revenue Service

U. S. SOCIAL SECURITY ACT

No.....

EMPLOYER'S APPLICATION FOR IDENTIFICATION NUMBER

1. City..... County..... State.....
2. Business name of establishment.....
3. Address.....
(Street and number or P. O. box)
4. Approximate number of persons now employed.....
(Means all persons receiving salaries, wages, or commissions, including executives)
5. Describe fully the exact nature of your business.....
.....
.....
6. (*a*) If a manufacturing concern, state principal products.....
.....
(*b*) If a nonmanufacturing concern, state principal goods or services sold.....
.....
.....
7. If this establishment is a branch or a subsidiary company, give name and address of headquarters.....
.....
.....
.....
(Signed) .....
Official position.....
Date.....

(Detach along this line)

STATEMENT OF JOHN T. CORBETT, ASSISTANT GRAND CHIEF ENGINEER AND NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Mr. CORBETT. Mr. Chairman and members of the committee, because of the shortness of the time I am merely going to state that the Brotherhood of Locomotive Engineers, through its grand chief engineer and through its national legislative board, have requested that I express the approval of the organization for the best provisions the committee may work out from the different bills. They make their endorsement with the understanding that this shall have no bearing on the progress that is being made toward the final passage or handling of the child-labor amendment.

The CHAIRMAN. I think we all feel the same way about it. In other words, what you want is the best bill the committee can work out, and the most effective bill?

Mr. CORBETT. Yes; and we have a great deal of faith in the committee and the sponsors of these bills.

The CHAIRMAN. We are very much obliged to you.

STATEMENT OF W. D. JOHNSON, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE, ORDER OF RAILWAY CONDUCTORS, WASHINGTON, D. C.

Mr. JOHNSON. Mr. Chairman and members of the committee, my name is W. D. Johnson. I am vice president and national legislative representative of the Order of Railway Conductors. I reside in Washington, D. C., and maintain an office in the Labor Building, 10 Independence Avenue.

The Order of Railway Conductors has been on record for many years in support of the child-labor constitutional amendment, which we feel deals with one of the most important questions now confronting the American people. It is indeed unfortunate and difficult to understand why only 28 of our 48 States have to date ratified this all-important amendment which means so much to the youth of our country who are being exploited in various industries and sweatshops.

I am duly authorized as a national representative of the Order of Railway Conductors to appear before your committee in support of legislation that will result in the abolition of child labor. In my judgment the three bills, S. 592, S. 2226, and S. 2345, now under consideration by this committee, deal with the child-labor problem in a very forceful manner. I have a great deal of faith in the sponsors of these three bills and the members of this committee. I am confident you are unselfish and deeply concerned regarding this important matter. Therefore it is my opinion that the committee will be able to draft a bill from the three bills now before you which will, if enacted into law, be workable and will make possible the withdrawal of the boys and girls from the various industries and sweatshops and place them in our educational institutions where they rightfully belong.

In my judgment the enactment of legislation as provided in S. 592, S. 2226, and S. 2345 will not in any way affect or retard the future handling of the child-labor constitutional amendment, but, to the contrary, will hasten State ratification.

STATEMENT OF JAMES A. FARQUHARSON, NATIONAL LEGISLATIVE REPRESENTATIVE, BROTHERHOOD OF RAILROAD TRAINMEN, WASHINGTON, D. C.

Mr. FARQUHARSON. Mr. Chairman and members of the Senate Interstate Commerce Committee, my name is James A. Farquharson. I am national legislative representative of the Brotherhood of Railroad Trainmen, with offices at 10 Independence Avenue, Washington.

The organization I have the honor to represent has always been sincerely interested in the child-labor movement and by repeated convention action has wholeheartedly endorsed it.

The two bills immediately under consideration before your committee, S. 2226 and S. 2345, I am sure, have for their purpose the same objective, that is, to curtail as far as is possible child labor in the industries of our country.

I realize from the testimony I have heretofore heard at this hearing that a great many constitutional questions are involved, but, as

a layman, I am not qualified to discuss them. However, knowing the authors of each of these bills and their sincerity in this very important question, I am confident that as a result of these hearings it will be possible to agree upon a bill that will express the desires of each and, I believe, accomplish what is intended.

In reading over the bills I am somewhat confused as to the interpretation that may be placed upon the first paragraph of S. 2345. As I have interpreted the language, I feel that it would be permissible to ship goods made in whole or in part by child labor if the goods were not placed in interstate or foreign commerce within 60 days from the time they were made, and this thought also applies to the amendments offered in connection with S. 2226. If my construction of the language is correct, I feel that it would not accomplish as much as I understand the language in S. 2226 to cover, in that I understand no goods could be shipped after January 1, 1938, in interstate or foreign commerce that had been made by child labor, and that appears to me to fix a definite date that would definitely stop the transportation of child-made goods. The other, I fear, would not stop it and would possibly make more difficult the policing of the legislation.

I do not feel that the passage of this legislation at this time would have a tendency to lessen the interest in the final enactment of the child-labor amendment. On the contrary, I feel that it would have the effect of an educational program and when the people of our country saw the effect of the State and Federal Governments cooperating to put an end to child labor it would tend to be a stimulant to an earlier adoption of the child-labor amendment.

STATEMENT OF JAMES A. EMERY, GENERAL COUNSEL, NATIONAL ASSOCIATION OF MANUFACTURERS, WASHINGTON, D. C.

Mr. EMERY. Mr. Chairman, I appear on behalf of Mr. William Warner, president of the National Association of Manufacturers. Unfortunately, he is unable to be present personally on account of an unexpected obligation.

I ask permission, on his behalf, to make this statement, and to submit some comment on the bills pending before the committee.

This is Mr. Warner's statement [reading]:

On behalf of the National Association of Manufacturers I beg to express our emphatic endorsement of the principles and purpose of two bills, designed to eliminate unjustified child labor, which now are before your committee. I refer to S. 592, by Mr. Clark, and S. 2226, jointly sponsored by yourself and Mr. Johnson, of Colorado.

The employment of children has been quite properly condemned by all elements of our society.

Employers in our manufacturing industries have gone beyond mere condemnation; they largely have eliminated child labor as an evil within their own jurisdiction. From 1900 to 1930, while our population between the ages of 10 to 15, inclusive, increased 48 percent, the number between those ages employed in manufacturing decreased 58 percent.

Stated another way, in 1930 there were approximately 192,000 manufacturing establishments in the country. Even had there been nearly three times as many children employed in manufacturing as actually were, there still would have averaged only one per factory in the United States.

The National Association of Manufacturers, whose members are estimated to employ more than half of all workers engaged in manufacturing, has clearly gone on record concerning its attitude toward the employment of children. Its declaration was made at the last annual meeting of the association, in December 1936, when it said:

"Child labor in manufacturing industries has decreased steadily during the past half century until those under 16 years of age employed in manufacturing today number less than 1 percent of all employees.

"We have been, and are, unequivocally opposed to child labor, as well as to sweatshops, in manufacturing. We will support appropriate legislation to eliminate these abuses."

In pursuance of the attainment of that desired objective, we believe the principles of your proposal and those of Senator Clark's are effective in policy and sound in law. Both measures operate alike to subject goods produced by child labor, when transported in interstate commerce, to the local law of the State of delivery, as though the goods were there produced. Secondly, they provide for the identification of child-produced goods by requiring them to be marked clearly as a condition of transportation.

I venture to urge your further consideration of a suggestion which we believe will extend the principle either of your proposal or Senator Clark's and assure a larger measure of cooperation by the Federal Government in the enforcement of the laws of the States affecting child labor.

Neither measure undertakes to regulate the interstate transportation of child-labor goods produced in violation of the law of the State of origin. Both subject such goods only to the law of the State of destination.

We urge your committee to consider the practical value of prohibiting such commerce in goods illegally produced. Such a prohibition will greatly strengthen local law enforcement in the State of production and correct it if it be lax. It will make doubly sure the complete elimination of harmful child labor.

Senator AUSTIN. Would you permit a question at that point?

Mr. EMERY. Would you permit me first to complete Mr. Warner's statement for the record?

Senator AUSTIN. Yes.

Mr. EMERY (reading):

There can be no question of your power to so legislate, for the authority of Congress extends equally to the origin as well as to the termination of the movement in commerce.

The effect of either of the pending proposals, if enacted, would be to close the major markets of the United States to child-labor products. Such legislation would eliminate effectively what little child labor in manufacturing still exists. To that objective the members of this association are aggressively devoted.

To attain that objective, we not only desire to see the commerce power validly and effectively applied but we will also support adequate legislation to strengthen and extend State law in every part of the union.

Senator AUSTIN. I did not realize that you were merely reading some other person's statement. Do you endorse what is said in that statement?

Mr. EMERY. I do, sir, with this statement, which I think is in amplification of Mr. Warner's statement——

Senator AUSTIN. If you do, I would ask you whether you mean to undertake to enter into control of production in the State of production by what you say, or whether you mean merely to outlaw the goods that are outlawed by the State of production.

Mr. EMERY. Precisely the last. We believe that under the clear decision in the convict-labor cases Congress may use the commerce power to refuse transportation to goods which have been produced in violation of the law of the State where child labor has been employed, and, secondly, that it may subject those goods, upon delivery in the State of destination, whether in the original package or not, to the law of the State of delivery, and that it may require, as a reasonable means of enforcing such provision, the identification of those goods in transportation by appropriate and reasonable mark.

Senator WHITE. May I ask the authors of the bill whether there was any particular reason for omitting from the bill the prohibition to which the witness has referred?

The CHAIRMAN. It just did not occur to us, I think. I am wondering whether or not there are cases such as you mention.

Mr. EMERY. What is that, Senator?

The CHAIRMAN. You called attention to the fact that there ought to be an amendment in the bill.

Mr. EMERY. Yes, sir.

The CHAIRMAN. Why do you suggest it? Are there such cases?

Mr. EMERY. There are many States in which the law is laxly enforced.

The CHAIRMAN. I see.

Mr. EMERY. And the prohibition of transportation to child-labor goods would compel the State of origin to administer its law more effectively, and if the Federal prohibition upon transportation were enforced it would assist the State to stop the bootlegging of goods of the very kind that have been here described.

The CHAIRMAN. For instance, in some of these States, although they have State laws, they just wink at the law and go ahead and permit it?

Mr. EMERY. They may lack enforcement facilities. They may lack the means or they may lack the will; but, with the aid of the Federal Government validly extended in that way, it would very effectively assist in the enforcement of the State law.

The CHAIRMAN. Yes.

Mr. EMERY. I call your attention to that particularly, Senator, because that principle has been in vogue for some 37 years in the Lacey Act, by which the Federal Government prohibited the reception for transportation of game illegally killed in the State in which the game was offered for shipment, and the principle has been sustained by the courts.

You will note, Senator, that in that statement they have not approved the principle that is expressed as the foundation of the Barkley bill and as an amendment to your bill. That is what is called the alternative principle, that prohibits the shipment in interstate commerce of goods which have been produced, in whole or in part, by the labor of children under 16 years of age, and, of course, this prohibition is applied to manufacture, mining, and production, with the exclusion of the products of agriculture.

I suggest that that flies straight in the face not merely of the *Dagenhart case* but squarely in the face of the *Child-labor-tax case*, which followed it.

With your permission, I should just like to call attention to what I think is a misapprehension of the dissenting opinion in the *Dagenhart case*.

Mr. Justice Holmes' dissent was not founded upon the proposition that the Federal Government possessed any power to control local production or to establish a standard by which local production was to be governed as a condition of entering commerce. He said in his dissent very plainly that if it were meant that the tenth amendment prohibited meddling with a local regulation, he joined in that view, but what he insisted upon was that the power to regulate included the power to prohibit, and that Congress possessed the

power to prohibit the entrance of any commodity into commerce, irrespective of its nature; in other words, that the power to regulate included the power to prohibit, whereas the doctrine that has been steadily laid down has limited that power of prohibition to the point where prohibition was essential to the enforcement of regulation, and where that regulation was justified either by the nature of the thing which was denied transportation, or by the purpose for which it was transported.

Thus it applied to game illegally killed, to stolen goods illegally transported, to diseased meat, to infected persons, to persons transported for immoral purposes, and to lottery tickets. In each of those cases either the article is in its nature a contraband of commerce or is an article which cannot be a subject matter of commerce, like stolen goods, or illegally killed game, or an article which is innately or inherently incapable of being the subject of commerce.

I call your attention to the fact that after the delivery of that dissenting opinion, in which Mr. Holmes expressed that fundamental view—and it is a very fundamental proposition; that is, that the power to regulate includes the power to arbitrarily deny transportation in commerce to any article irrespective of its nature, as part of the commerce power—in the *Child-labor-tax case*, which followed that by 2 years, the Court had changed only in the matter of the Chief Justice. The same dissenters sat upon the bench, and in the case of *Bailey* v. *Drexel Furniture Company*, Mr. Chief Justice Taft writing the opinion, it was pointed out that this case, which applied the principle of a tax as a means of regulating exactly the same type of labor which had been regulated directly under the *Child-labor case*, was indistinguishable from the *Dagenhart case*.

I read this language [reading]:

> The case before us cannot be distinguished from that of *Hammer* v. *Dagenhart* (247 U. S. 251). Congress there enacted a law to prohibit transportation in interstate commerce of goods made at a factory in which there was employment of children within the same ages and for the same number of hours a day and days in a week as are penalized by the act in this case. This Court held the law in that case to be void. It said:
>
> "In our view the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States, a purely State authority."
>
> In the case at bar, Congress, in the name of a tax which on the face of the act is a penalty, seeks to do the same thing, and the effort must be equally futile.
>
> The analogy of the *Dagenhart case* is clear. The congressional power over interstate commerce is, within its proper scope, just as complete and unlimited as the congressional power to tax, and the legislative motive in its exercise is just as free from judicial suspicion and inquiry. Yet when Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a State in order to coerce them into compliance with Congress' regulation of State concerns, the Court said this was not in fact regulation of interstate commerce, but rather that of State concerns and was invalid. So here the so-called tax is a penalty to coerce people of a State to act as Congress wishes them to act in respect of a matter completely the business of the State government under the Federal Constitution. This case requires, as did the *Dagenhart case*, the application of the principle announced by Chief Justice Marshall in *McCullough* v. *Maryland* (4 Wheaton 316, 428) in a much-quoted passage.

I call your attention to the fact that all the Justices who dissented in the *Dagenhart case* joined in this affirmative opinion on a case indistinguishable from the *Dagenhart case*, with the exception of Mr.

Justice Clarke. It was an 8-to-1 decision, and Mr. Justice Clarke wrote no dissent.

So that whatever disagreement there was in the Court about the fundamental principle that Mr. Justice Holmes had stated in his dissent, the Court joined now in declaring that Congress, neither directly, by creating a standard of local employment and refusing transportation to any goods produced in violation of that standard of employment, nor indirectly, by levying a tax upon the same classes of employment, was authorized under the commerce power or under the tax power to control local production, either in the name of a tax or in the name of commerce.

If Mr. Justice Holmes entertained the opinion which he had formerly held, and had not yielded it, he undoubtedly would have done what he did in so many other cases, in which some of his own very famous ideas are constantly found in his dissents.

The CHAIRMAN. I think the statement has been made here that the manufacturers of the country have been opposing the child-labor amendment. Has your organization opposed, before the State legislatures, the child-labor amendment?

Mr. EMORY. It opposed the child-labor amendment before the committee which had it in charge at the time it was proposed, and urged an amendment of it.

The CHAIRMAN. Since that time——

Mr. EMERY. Yes, sir; it opposed the child-labor amendment, not because it was opposed to a child-labor law but because it believed that it was not a child-labor amendment. It gave to Congress the power to regulate, limit, and prohibit the labor of all persons under 18 years of age. That would have applied to 42,000,000 people in our population, and we do not think that labor between 16 and 18 can be appropriately called child labor.

We felt that the power to prohibit included, of necessity, the power to condition, and that since the power to prohibit included the power to condition, that power could be employed for providing a variety of conditions, including educational qualifications, as a condition to employment. It included absolute prohibition, and while it may be said that Congress would not have improperly used that power, our view was that those who grant power can determine the extent of the grant, but they have no means of determining, after it is granted, how it will be employed. The principle at issue was a very fundamental principle.

So far as the actual employment of child labor under 16 years of age is concerned, our own members have consistently opposed it, and, so far as we know, such employment is exceedingly limited, if it exists at all, because it is not only objectionable on social grounds, but it is objectionable on economic grounds. It would not be profitable.

But, between the ages of 16 and 18, we enter the period of apprenticeship, when men are trained to become skilled labor. Already we have in the United States, in many industries, a dearth of skilled labor. The earning power of labor, as well as its productivity, are largely dependent upon the nature of its training and the skill which it acquires, which determines its earning power, on the one hand, and its efficiency in production on the other, which are matters of vital importance in manufacture.

The CHAIRMAN. Do you think it would be proper to employ children between the ages of 16 and 18 in hazardous occupations?

Mr. EMERY. No. I would say, in addition to that, that I am quite sure, from the views of our own directors, that the limitation on extra-hazardous labor, especially in mining and in manufacturing operations that are extra hazardous, might well include the age of 18; but I do not think that is within the reach of the Federal authority.

The CHAIRMAN. They do not employ them in the mines in our State.

Mr. EMERY. No, sir.

The CHAIRMAN. In most of the Western States they do not employ them. They may employ them in the coal mines in other States, but they do not employ them in our section of the country, and I do not think there has ever been any attempt to employ them in underground work. They may be employed on surface work, where the work is not hazardous.

Mr. EMERY. There is one other point to which I should like to call your attention, that is within the limits of Federal power sought to be applied here. We think it would strengthen it, although I see you have excluded all forms of agricultural labor, doubtless on grounds of administration as well as for other considerations. I think the word "processing" would strengthen this, in addition to "manufacturing".

Processing is not manufacturing. It is merely the treatment of goods, without transformation in form. Thus it would apply to canning.

Senator AUSTIN. Where does that come?

Mr. EMERY. In Senator Wheeler's bill the words used are "mining, manufacture, and production."

Senator AUSTIN. On what page is that?

Senator JOHNSON of Colorado. It is found on page 1, the third line, and it is in a little different form. The words are "manufactured, produced, or mined."

You suggest the addition of the word "processed" after "produced"?

Mr. EMERY. Yes.

The CHAIRMAN. I think it is a good suggestion.

Mr. EMERY. "And merchandise manufactured, produced, mined, or processed."

Senator JOHNSON of Colorado. Then it is used in another place, I believe.

Mr. EMERY. Yes, sir.

The CHAIRMAN. It is your view, is it, that the Supreme Court would hold unconstitutional a direct prohibition of shipment of goods in interstate commerce?

Mr. EMERY. I do, Senator Wheeler. I see nothing in the later opinions that has changed that. The distinction is between the making of a rule and the breaking of a rule; between denying transportation under the power to regulate commerce as a means of excluding that which by its nature is not commerce or which by virtue of its purpose is not commerce, and undertaking to employ the commerce power for the purpose of establishing a local regulation in

production. That it seems to me is manifest upon the face of the proposal.

The CHAIRMAN. I have thought there was serious question as to whether or not they would not declare it unconstitutional in that event.

Mr. EMERY. I should like to call your attention further to the fact that in the *Whip and Collar case*, the last word of the Supreme Court on the subject, and by unanimous opinion of the Court, they refer to the *Dagenhart case*, and the tax case with it, and they refer to it with favor and approve it again, and distinguish it from the case before the Court. Our whole purpose in calling it to your attention now is to show the effectiveness of the legislation, and effective legislation we think is within the reach of the Congress by setting up a means to enforce its own law, of course within legitimate limits.

And, frankly, because we did oppose the child-labor amendment we may say we urge this because we think it would weaken the effect of the effort to ratify the child-labor amendment. Of course, I think the influences behind the child-labor amendment are quite great enough to suport it, unless public opinion of the communities in which it is presented is opposed to it. It has been before the country for nearly 14 years, and has failed of ratification in some States; and there is no reason why, in the light of the powers the Federal Government possesses for the purpose, you cannot partically eliminate, so far as the Federal Government can legitimately exercise that power, child labor, which is so objectionable.

The CHAIRMAN. I have thought, for instance, that section 3 of the Barkley bill:

> That any person who violates any of the provisions of section 1 of this act, or who refuses or obstructs entry or inspection authorized by section 2 of this act—

and also section 2 itself, was flying right in the face of the Supreme Court's decisions, and it would almost look as though they wanted the Supreme Court to declare it unconstitutional again.

Mr. EMERY. I have not commented upon those sections, but I am very clear that they are open to exactly the same objection as the fourth amendment; and in your own bill so far as inspection is concerned, which I heard commented on here, enforcement, it would seem to me that the provision which constitutes section 7 of your bill:

> Any violation of this act shall be prosecuted in any court having jurisdiction of crime within the district in which said violation was committed, or from or into which any such goods, wares, or merchandise may have been carried or transported, or in any State or Territory, contrary to the provisions of this act.

That enforcement would be very effective in making such inspection as is essential to the enforcement of the provision.

The CHAIRMAN. As a matter of fact, where they are to adopt rules and regulations, you could not have a broader provision.

Mr. EMERY. Not very well.

The CHAIRMAN. Than to say to the Department: You may make any rules and regulations for the purpose of carrying out the provisions of this act—it does not seem to me that we could make any broader provision.

Mr. EMERY. I do not see how you could go any further.

The CHAIRMAN. If we attempt to specify the regulations they can make, we would limit their authority to go in and make rules and regulations.

Mr. EMERY. Well, the only thing I would venture to urge on that, which you doubtless have in mind, is the hope that you will make any provisions that might be ambiguous, as clear as possible. In the administration of a criminal act it is important that a man may understand clearly in advance what is forbidden and what is permitted, in order that he may not be confronted by an ambiguous provision. Take a provision similar to the Barkley bill, that where the prohibition is to attach to goods produced in a factory or a plant in which a person under 16 years of age has been employed "in or about the place", and assuming all the difficulties that were presented by the previous speaker here, whom I listened to with great interest, you can see how that would operate according to the physical nature of the plant itself.

For example, you may have one plant in which the office is separated from the plant, and another in which the office is a part of the plant. A messenger boy in the office would bring the plant's operation within the prohibition of the act and subject the operators of the plant to the criminal penalty, whereas it might be perhaps the intention to limit the prohibition to those actually engaged in the processes of manufacture. On the other hand, if the executive office of the plant was separated from the plant itself, the messenger boy who carried a message in or around the plant would not be within the reach of the act. It is more a case of the physical location of the plant. As I understand your bill, Mr. Chairman, the intent is to eliminate child labor from the processes of manufacture and production.

The CHAIRMAN. I think Senator Barkley's bill goes so far that you might say if a company used a messenger boy in its office, and that office was a part of the plant, it would include him, would include all workers.

Mr. EMERY. It would, being entirely due to the physical construction of the property and not on account of anything else.

Senator AUSTIN. Mr. Chairman, I should like to know what Mr. Emery has to say, if anything, about the possibility of this Wheeler-Johnson bill reaching private houses, that is, goods produced in private houses.

The CHAIRMAN. That is section 4, Mr. Emery.

Mr. EMERY. Section 4 is the section which I understand prohibits——

The CHAIRMAN (interposing). Suppose you look at section 4, on page 4 of that bill.

Senator JOHNSON of Colorado. Here it is, Mr. Emery.

Mr. EMERY. I thank you. Well, that is the section that in principle I call the alternative provision, that would prohibit the introduction into commerce of any goods which were manufactured, mined, produced, or processed by any person under 16 years of age. If that is a valid provision, and if Congress may prohibit the introduction into commerce of any goods it desires to prohibit, then certainly it also has the power by appropriate legislation to enforce

148316—37——11

such a provision, and it can pursue, through processes of inspection, on to the point of manufacture; that is, if it is valid; if the *Dagenhart case* is overruled. But I do not believe that case is overruled, and I believe the child-labor case supports it. And if you cannot do it in the one, you cannot do it in the other.

The CHAIRMAN. In event the *Dagenhart case* should be overruled, and you were to put a provision into a bill to make rules and regulations for enforcement, it would carry with it the power to do whatever they have to do in order to prevent what was prohibited.

Mr. EMERY. Yes, sir; subject only to the prohibitions of other amendments, like the fourth amendment.

The CHAIRMAN. Yes; that is it.

Mr. EMERY. There is no doubt of that. The restraint would be only in the matter of the power the Congress has over the subject—that is, the valid power it has.

The CHAIRMAN. I have been very anxious to prevent the use of child labor, but I have seriously questioned whether the Supreme Court would overrule the *Dagenhart case*. While I was willing to put in a provision along that line in order to put the question up to the Supreme Court again, yet in the meantime if the Supreme Court should sustain the *Dagenhart case*, it seemed to me the people who wanted to prevent the use of child labor ought to be delighted to have the other provision in the bill, so that they could at least see if they could not do something toward preventing the use of child labor. But, apparently, some of these people who say they want to prevent the use of child labor, simply want to put a case up to the Supreme Court and see if they won't overrule it, and if they should not overrule it then they would be left out in the cold, and there would remain the same old child-labor problem, at least until the child-labor amendment is ratified.

Mr. EMERY. This is a practical method of approaching it.

The CHAIRMAN. I confess my inability to follow the philosophy of people who argue along that line, although they say they are in favor of prohibiting the use of child labor. My reasoning powers may be very wrong, but that is the way I see it.

Mr. EMERY. Today you have effective child-labor laws in the majority of the industrial States, and if you can assist them in the enforcement of those child-labor laws, and by your example cause them to improve them, which they will undoubtedly do under the inspiration of Federal enforcement, you make it impossible for goods so made to reach a market.

The CHAIRMAN. Speaking of it from a practical standpoint, if a manufacturer has to brand his goods in event he is going to ship them in interstate commerce, and knows he is subject to prosecution if he does not brand them correctly, he is not going to take a chance for the little profit he might make. He is going to be very careful about complying with the law, and, of course, he knows in advance that immediately he brands his goods as child-labor-made goods he is stigmatized as a user of child labor.

Mr. EMERY. Certainly.

The CHAIRMAN. And people interested in the subject will not buy goods coming from such a factory.

Mr. EMERY. Yes.

The CHAIRMAN. And railroads won't transport his goods in interstate commerce if they are going to be held liable in event they are so shipped contrary to the law.

Mr. EMERY. Yes. I might say right here that the great body of manufacturers resent any suggestion that they are employers of child labor. They desire to see effectual enforcement, and it becomes a matter of humiliation for a man to be found engaged in that kind of practice. You brand him at once by making him identify himself with that kind of manufacture.

The CHAIRMAN. Yes, that is so. And, after all, almost everybody is fighting to gain and hold the good opinion of mankind.

Mr. EMERY. Surely.

The CHAIRMAN. And if a manufacturer is branded as a user of child labor, as a manufacturer of child-labor-made goods or subject himself to prosecution——

Mr. EMERY (interposing). Yes; he better quit advertising.

The CHAIRMAN. Yes; he better stop manufacturing and cease advertising.

Mr. EMERY. Yes; because he is putting himself in position where he will lose the good will of the great majority of his customers.

The CHAIRMAN. For, after all, the rank and file of the people would not buy such goods, and merchants would not handle his goods, I mean if they are manufactured by the use of child labor. Certainly the great bulk of the women of the country would not buy them. The fact that a manufacturer was producing goods by the use of child labor would soon become known throughout the country.

Mr. EMERY. Yes. I think the practical effect of your bill, and that is the one to which I refer, is to put the child-labor employer into a Federal pillory.

The CHAIRMAN. That is the way it seems to me. It would put him in a class where he would be held up as a user of child labor, and he would be pilloried from one end of the country to another; and no manufacturer would want to be placed in that position, or at least I would not think so.

Senator AUSTIN. As to section 4 of the bill—and I am not particularly anxious to attach your idea to that section, but I use it for illustration: If you prefix to the first sentence a phrase meaning substantially the following:

> In any State where the employment of child labor is prohibited by the law thereof, it shall be unlawful—

and so forth.

Mr. EMERY. Yes.

Senator AUSTIN. Then we would carry out your idea with reference to the origin.

Mr. EMERY. Yes.

Senator AUSTIN. Or production of goods, would we not?

Mr. EMERY. Yes. That is prohibition upon transportation of goods which are produced in violation of the law of the State, if produced by child labor.

Senator AUSTIN. Yes.

Mr. EMERY. And the State determines then what the law is, and the Federal Government is denying the facilities of interstate commerce to the violator of the law of the State.

Senator AUSTIN. As section 4 is now drawn it does not contain any element save the Federal element, does it?

Mr. EMERY. How is that?

Senator AUSTIN. As now drawn section 4 rather invites the challenge that it is an attempt by the Federal Government to regulate intrastate commerce, does it not?

Mr. EMERY. Yes, sir. That is, it undertakes to arbitrarily make it unlawul to transport products which have been manufactured in violation of the standard established not by the State but by the Congress.

Senator AUSTIN. Yes. Have you studied this far enough to make any suggestion as to where you would put the qualifying words in the bill in order to make it operative on the place of origin as well as the place of destination?

Senator JOHNSON of Colorado. I think the bill does that already.

Senator AUSTIN. How is that covered?

Senator JOHNSON of Colorado. It says "from or into." It carries that phraseology.

Senator AUSTIN. Where is that, Mr. Emery?

Mr. EMERY. Now, it is the section which makes goods transported in interstate commerce subject to the law of the State of destination, on arrival, whether in the original package or not.

Senator AUSTIN. Yes; what section is that?

Mr. EMERY. That is section 1. Now, section 2 makes unlawful the transportation of child-produced goods into any State or Territory with intent to violate the law of that State or Territory.

Senator AUSTIN. Yes; go ahead.

Mr. EMERY. Then section 3 provides for the marking of the package in order to identify products of child labor. And the remaining sections of the bill deal with that.

Now, section 4, to which you have just referred, is the section which contains the general prohibition against the transportation in commerce of any goods produced by child labor, not because they are in violation of the law of the State but because in violation of the Federal standard of 16 years of age. So that it is a violation of the Federal standard and not a violation of a local standard, providing under the bills before the committee it is made unlawful.

Senator AUSTIN. Would you leave that in the bill if you had your own judgment to follow?

Mr. EMERY. That is the section which I fear would face the *Dagenhart case*, and the *Drexel Furniture Company case*. I think that is the one that walks straight into that decision, or those two decisions, which have been repeatedly accepted by the Court.

Senator JOHNSON of Colorado. At this point I should like to call attention to the separability of the clauses.

Mr. EMERY. I know.

The CHAIRMAN. So that if they should hold that portion invalid the rest of the bill would be effective.

Mr. EMERY. I realize that.

Senator AUSTIN. I have not quite secured an answer to my inquiry. Mr. Emery, would you make the third section go further? If you were going to have all three of these aspects, with the matter to which you called attention left here unchanged, that is, prohibition against shipment into a State that prohibits child-manufactured goods, and an application of the local law to all goods shipped in, I mean with reference to child-labor-made goods, and that general provision contained in section 4, wouldn't you have to create a new section here to cover child-labor-produced goods with reference to the State of origin?

Mr. EMERY. I should think it would be the clearest way to state it. It can be stated very briefly, and then you will have covered three things: You will have prohibited transportation of goods offered for shipment in violation of the law of the State of origin; you will have subjected to the law of the State of destination, goods on arrival, whether in the original package or not; and, thirdly, you will have forbidden the transportation of goods in interstate commerce with intent or knowingly to violate the law of the State of destination. That is, as I realize, somewhat of a difficulty in the matter of enforcement, intent, because it has to be prima facie considered that goods are to be shipped into that State. Your fourth proposition is the marking of goods for the purpose of identification.

Senator AUSTIN. No; that is the fifth proposition, is it not?

Mr. EMERY. Well, there are four if you include the provision with respect to prohibiting shipment from the State of origin. Then you have covered the State of origin, the State of destination, the marking of goods, and then the shipment by parties from a State in which they may be lawfully produced; but they are offered for shipment into a State in which the goods are prohibited—possession, sale, or delivery. In the regulatory section, if you are going to have administration, you have to give leeway to regulation. For instance, the provision I heard commented upon this morning with respect to acceptance of records of birth as prima-facie evidence. Of course, any provision for regulation will go into that in a little more detail, as to providing a method of certifying birth. You will have, as has been said, the elaborate figures provided by the Social Security statistics, probably the most complete information with respect to birth and age that has been secured. Of course, one of the difficulties of the original child-labor case in the matter of administration was the requirement of methods of proof of birth that were almost impracticable, because at that time our people were not given to providing birth certificates. The war taught us the importance of that. In foreign countries everyone has to have a birth certificate for this or that purpose, or to get into a school. Over here we were not considering that a matter of such great importance until the World War.

The CHAIRMAN. All right, Mr. Emery, if that is all.

Mr. EMERY. I thank you.

The CHAIRMAN. Mr. Bryan.

STATEMENT OF J. WALLACE BRYAN, ATTORNEY AT LAW, REPRESENTING THE BUREAU OF CATHOLIC CHARITIES OF BALTIMORE

The CHAIRMAN. Please state your name for the record.

Mr. BRYAN. In order to save the time of the committee, I have a brief statement which will give a summary of views rather than say what I should like to say at greater length.

My name is J. Wallace Bryan. I am a member of the bar of Maryland, and am actively engaged in the practice of the law, with offices in the Mercantile Trust Building, Baltimore, Md.

I am appearing at the present hearing as representative of the Bureau of Catholic Charities of Baltimore, whose headquarters are at 415 Cathedral Street.

I am also a member of the American Bar Association's special committee to oppose ratification by States of Federal child-labor amendment and promote adoption of uniform Child Labor Act. So far as the committee is concerned, however, I am here solely as an individual and not as the committee's representative, although I am able to state that all of the members of the committee individually favor the bill. It is to be understood, also, that neither the committee nor myself is authorized to express the views of the American Bar Association, since the latter has had no opportunity to determine through its duly constituted representatives what its attitude will be toward the pending bill.

OBJECTIVE AND METHODS

The enlightened public opinion of the country is unquestionably opposed to the exploitation of children in labor and industry. That proper legal measures should be taken for the abolition of such exploitation, wherever it exists, can admit of no question. It may be safely asserted that everyone present at this hearing accepts this as the common objective.

Although we all agree that there should be an end to child labor, as the term is commonly understood, there are sharp differences of opinion as to how this purpose may best be accomplished. Some sincerely believe that the best method lies in the approval by three-fourths of the States of the constitutional amendment now pending. Others believe with equal sincerity that some other method would be preferable. These differences in opinion have led to a long controversy, the merits of which, as I believe, are not involved in the question now before this honorable committee, and which are not likely to be finally determined for some time to come.

In this situation, if the evils of child labor can be effectively attacked by a method on which all parties desirous of that consummation can unite, such a solution would be obviously in the public interest. It is because I believe that the Wheeler-Johnson bill constitutes such an instrumentality that I am here to urge that it be promptly enacted into law.

The Wheeler-Johnson bill considered: The provisions of the bill are so well known to the members of the committee that an extended analysis of them seems unnecessary. Reduced to its essentials, the bill undertakes to prevent child labor: (1) By directly prohibiting the interstate transportation of the products of child labor—section 4; and (2) by subjecting child-labor products, transported in interstate commerce, to the operation and effect of the laws of the State of destination—section 1—and prohibiting the interstate transportation of such products for sale or use in violation of the laws of such State—section 2.

The bill further forbids the interstate transportation of such goods unless the same are conspicuously labeled, in the manner prescribed in section 3, to show the names and addresses of the shippers and consignees, the nature of the goods, the kind of child labor used in their production, and the types of places where such work was performed. "Children" are defined as persons under the age of 16 years. The bill contains detailed provisions for the detection and punishment of violations, and other implementing features which need not now be discussed. Finally, it excludes from its operation certain classes of agricultural products or agricultural work specified in section 5.

The two modes of prohibition are manifestly alternative. If the direct exclusion of child-labor products from interstate commerce is sustained as constitutional, there will be little, if any, room for the operation of the provisions subjecting such products to the laws of the State of destination. If, on the other hand, such direct exclusion is held invalid, then the other method is left in the bill unimpaired.

In either event, it is my belief that the bill will substantially abolish the evil of child labor within a comparatively short time, and thereby bring about the early accomplishment of our common objective.

THE CONSTITUTIONALITY OF THE BILL

In my opinion, there is at least a reasonable chance that the direct exclusion of child-labor products from interstate commerce would be held constitutional by the Supreme Court as now constituted. The Court has expressly overruled earlier decisions with respect to State minimum-wage laws, and perhaps it did the same thing, in effect, in sustaining the Wagner Labor Relations Act. These decisions would seem well to justify the submission of the method provided in section 4 of the bill to the Supreme Court for its further consideration in the light of present industrial and social conditions.

However this may be, there seems little reason to doubt the constitutionality of the alternative provisions subjecting child-labor products to the laws of the States of destination, and prohibiting their interstate transportation for sale or use in violation of the laws of such States. The decisions of the Supreme Court in the recent case of *Whitfield* v. *Ohio* (56 Sup. Ct. 532) and its companion case, *The Kentucky Whip & Collar Co.* v. *Illinois Central Railroad*, would seem directly in point. In both of them congressional legislation subjecting to prohibition by destination States of the sale of convict-labor products brought into them through the channels of interstate commerce were upheld. In each case it was conceded that the products in question were harmless in themselves. The prohibition was based squarely on the proposition that Congress can lawfully authorize the States to exclude from their local markets interstate goods produced with labor the employment of which was contrary to the public policy of such States. This is precisely the principle on which the Wheeler-Johnson bill is constructed.

THE EFFICACY OF THE BILL

Even if the direct prohibition of the interstate transportation of child-labor products is not sustained, there seems every reason to believe that the subjection of such interstate products to the laws of

the States of destination will be almost equally efficacious because—

(1) It would seem entirely practicable for the Federal authorities to determine, from local records and Social Security records, just what concerns are employing child labor, and to what extent.

(2) In view of the present condition of public sentiment, most of the States would almost certainly enact local prohibitory statutes, of the type which has been passed recently in New York and elsewhere.

The CHAIRMAN. As a practical proposition let us suppose that some manufacturer in North Carolina or South Carolina or Georgia, or some other State that does not have a child-labor law, is seeking to send his products into other States having child-labor laws, but perhaps not as effective as might be desired, don't you think those States would immediately enact the necessary laws to keep out of competition with their own manufacturers the goods manufactured elsewhere by the use of child labor?

Mr. BRYAN. I would think they would have to. There would be no escape from it.

The CHAIRMAN. They would not only do it, but would be very eager to do it. Their manufacturers would want to shut out competition.

Mr. BRYAN. They would be almost compelled to do it; yes, sir.

The CHAIRMAN. All right. You may proceed with your statement.

Mr. BRYAN. (3) The information which could be furnished by the Federal and local authorities, and by competitors, to railroads and other carriers would enlist the cooperation of these agencies because of the penalties imposed on those who transport child-labor products for sale or use in violation of the laws of the States of destination; (4) the labeling provision itself, by giving publicity to the facts with regard to the employment of child labor in particular industries, will focus public sentiment upon such industries and render it almost impossible for them to continue subversive child employment.

And I might interject right there this thought. We can well see what an important sales argument the competitors of child-labor concerns would be supplied with. Salesmen could use that contention as an almost conclusive argument in doubtful cases, with public sentiment as it is at the present time.

In view of these considerations, it is submitted that all of us should join in making a test of the plan embodied in the Wheeler-Johnson bill.

If it proves effective in practice, it will accomplish within a comparatively short time what otherwise might require years for its consummation.

If the bill should not be effective, the fact will soon become manifest. Such specific deficiencies as it may develop can easily be remedied by further legislation. If it should fail completely, the experiment would refute at least one of the arguments which has heretofore been strongly urged against constitutional amendments dealing with the subject.

I think I might comment right here with reference to the effect of this bill on a possible ratification of the child-labor amendment. Certainly if the bill fails the only effect would be to tend to expedite rather than delay the adoption of the amendment, if it is to be adopted. On the other hand, if the bill succeeds there may be no further necessity for the amendment, although I do not know about that. I do not think in any sense it can be said that the passage of this bill will have any substantial effect on the ultimate decision on the pending amendment. Certainly those who are here, as I am, committed against the amendment, have no such intention or idea in supporting this bill.

I thank you.

STATEMENT OF WILLIAM F. MONTAVON, DIRECTOR, LEGAL DEPARTMENT, NATIONAL CATHOLIC WELFARE CONFERENCE

Mr. MONTAVON. The National Catholic Welfare Conference has a deep interest in every legislative proposal, the purpose of which is to extend protection to family life and the child. The bills now before your committee have that purpose. The exploitation of child labor for profit in some industries in our country is a major blot on a creditable national and State record. To remove that blot and prevent that exploitation is the duty of legislative bodies in the several States and in the Union, each within the limitations of its own jurisdiction.

Communication facilities in our times have progressed until problems, which a few years ago were of local significance today affect the well-being of persons far removed from the point at which the problem arises, and thus, problems once local, become national in their effect. This situation demands uniformity in the law and its application, and what once seemed the prerogatives of local bodies must give way before the common interest.

In legislation to control the exploitation of the child in industry uniform standards, particularly in the matter of the age below which the child may not be employed, are demanded.

S. 2345, introduced by Mr. Barkley, and S. 2226, introduced by Mr. Wheeler, both provide for such a minimum standard and apply it to the production of products in interstate commerce.

S. 2226 seems to apply that standard only to goods actually entering interstate commerce, and does not specifically extend the standard to all the activities of the plant in which such goods are produced. This provision of this bill would tend to open the doors to confusion, even to fraud, and would notably increase the difficulty of enforcement.

S. 2345 applies the standard to the whole plant, even in which only a part of the products enters interstate commerce.

We feel that the age of 16, stated in both bills, is a fair standard, and that the provisions of S. 2345 are to be preferred over S. 2226.

Both bills recognize the probability that the minimum standard fixed by Federal statute and applied to goods in interstate commerce may be lower than standards fixed by State legislation and applied to goods in commerce within the jurisdiction of the State.

S. 2226 seeks to protect such higher State standards by making it a Federal offense to ship into the State with the higher standards any goods produced under lower standards in another State. Under the provisions of S. 2226 the enforcement of this protecting division seems to be difficult. It would under this seem to be necessary for the Federal authority to supervise every step in the production and ship-

ment of every article intended for interstate commerce and that seems to be as unnecessary as it doubtless would be a vexatious confusion of Federal and State jurisdiction.

S. 2345 is simpler. Under that act if a child under 16 is employed in the plant the product is not eligible for interstate commerce. To determine whether or not a particular plant is producing goods in conformity with the higher standards of a particular State would be less difficult than the procedure provided in S. 2226 and is therefore preferable, and we suggest that your committee amend the bill to protect any State having standards higher than those fixed by the Federal statute.

In conclusion, I express the hope that your committee will find it convenient to combine what is good in the bills now before you and in suggestions that may be made in debate and thus give to the country sound legislation regulating child labor, the need for which has long been apparent and becomes daily more urgent.

I thank you.

The CHAIRMAN. I fear we are not going to be able to hear, at least not at this session, all of the persons present. Some of the names on our list we have already skipped, with the understanding that they might file a statement for the record. The next name on our list is Miss Mary Killbreth.

Miss KILLBRETH. Mr. Chairman, it is immaterial to me whether I make my statement to you verbally, or whether I may be permitted to file a statement.

The CHAIRMAN. Are you perfectly willing to file your statement?

Miss KILLBRETH. Oh, yes. It is practically all factual data. I am perfectly willing to submit it.

The CHAIRMAN. Very well. Cannot the balance of those present file their statements with the clerk of the committee? (A pause, without response.) Is there anybody here who cannot file the statement he or she wishes to make?

Mr. OLIVER. Mr. Chairman, I prefer not to file my statement.

Mr. BROPHY. I have a short statement I could make, in a very few minutes, I mean.

Mr. THOM. Mr. Chairman, it would only take me a few minutes to say what I have to say.

The CHAIRMAN. All right. Come forward to the committee table.

STATEMENT OF ALFRED P. THOM, JR., ASSISTANT TO THE GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D. C.

Mr. THOM. I am appearing on behalf of the Association of American railroads. I am not appearing in opposition to the bill, but for the purpose of making certain observations with regard to the peculiar relationship of railroads to the problem you have before you, and to suggest an amendment.

I should say, first, that we are not discussing S. 2345 or bills of similar purport, because the railroads are not involved. As to the other bills, such as S. 2226, we wish to direct your attention to these facts:

The railroads, being common carriers, are required by law to accept for transportation all goods offered, from whomsoever offered, unless the transportation of such property is prohibited by law. The requirements of the proposed legislation as at present written would tend to make it necessary for the railroads to police shipments of the character covered, which would require local agents to keep themselves currently advised as to the laws of the various States on the subject. It would seem fair, therefore, that the application of the provisions of these bills should be made clear and certain.

We appreciate, of course, that the word "knowingly" is used, and we feel that the use of the word does not, I might say, protect carriers from the burden which would be placed upon them by the enactment of the proposed legislation.

The CHAIRMAN. If we place in an act a provision prohibiting you from "knowingly" accepting and transporting goods which are misbranded, shouldn't you be prosecuted?

Mr. THOM. The word "knowingly", we feel, is a very broad term.

The CHAIRMAN. But it is a term which has been defined by the courts.

Mr. THOM. The amendment I am proposing is predicated upon the precedent in the so-called Hot Oil Act. In that act it was not a question of clearance of oil, of "hot oil" at point of origin. Here the railroads are required not only to use due diligence in order to know whether goods offered for transportation are the products of child labor, but have to know the laws of the State to which they are destined, and we feel that this would throw an improper burden——

The CHAIRMAN (interposing). I do not agree with you on that at all. The bill provides that any goods shipped in interstate commerce which are manufactured in a factory employing child labor——

Mr. THOM (interposing). You are referring now to section 4?

The CHAIRMAN. Oh, no. I am speaking about branding.

Senator JOHNSON of Colorado. They have to be branded when they go into interstate commerce regardless of the laws of the States.

Mr. THOM. But let us suppose they are not branded.

Senator JOHNSON of Colorado. If you accept them knowingly, you are guilty.

Mr. THOM. Then you get back to the question of "knowingly" accepting them.

Senator JOHNSON of Colorado. Yes; and that is the only question involved.

Mr. THOM. Does that mean constructive knowledge, or implied knowledge, or actual knowledge?

The CHAIRMAN. That depends upon what the courts have held.

Mr. THOM. It is held differently in different States.

The CHAIRMAN. But you are to be prosecuted under the Federal law.

Mr. THOM. I do not know what the Federal courts have held on that question. Have they been uniform?

The CHAIRMAN. I cannot say offhand, but I do not think there is any question about the fact that the Supreme Court has defined what is meant by "knowingly."

Senator JOHNSON of Colorado. I have the decisions in my office.

The CHAIRMAN. I do not think there is any question about that.

Mr. THOM. Well, here is our proposal anyway, and we do not think it will weaken your bill at all. We propose a new section to be inserted, as follows:

(a) No common carrier shall be subject to any penalty under this Act in any case where (1) it transports goods, wares, or merchandise manufactured, produced, or mined, on or after January 1, 1938, wholly or in part, through the use of child labor, which are not labeled in conformity to the provisions of this Act;—

Now, the word "knowingly" would of course apply as well—

or (2) if so labeled, such carrier has a certificate furnished by the shipper, which on its face appears to be valid, certifying that the shipment in question is not consigned, nor will be reconsigned, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of a State or Territory.

The CHAIRMAN. I do not think that is necessary at all. If you will read the bill again, you will find that the only thing the bill prohibits is the shipment of goods misbranded in interstate commerce, regardless of where they are going. So your no. 2 has no application as it seems to me. In addition to that you are putting it in the negative:

(a) No common carrier shall be subject to any penalty under this Act in any case where (1) it transports goods, wares, or merchandise manufactured, produced, or mined, on or after January 1, 1938, wholly or in part, through the use of child labor which are not labeled in conformity to the provisions of this Act;

Mr. THOM. Let us assume that some manufacturer produces, through the use of child labor, a product and does not label it.

The CHAIRMAN. He would be guilty of offering it for shipment, and the railroad company would be guilty if they took the goods knowing that fact.

Mr. THOM. If they knew it?

The CHAIRMAN. Yes.

Mr. THOM. Then, it comes down to the question of knowledge again, which we are a little anxious about; and it puts the burden of policing upon us, which we would not like to have.

The CHAIRMAN. I do not think you need worry about that very much. You have an agent in every town, and your agent knows whether or not a manufacturer in his community employs child labor. The railroads have plenty of agents and know about conditions existing in the communities. You know pretty well whether a manufacturer is employing child labor at a given point, and if you do not know, you are not guilty. If you do know it, and transport such goods, you are guilty.

Mr. THOM. Well, Mr. Chairman, I am not a practical operating man, or a practical traffic man.

The CHAIRMAN. But you are a practicing lawyer, and a practical lawyer, are you not?

Mr. THOM. I hope so, but——

The CHAIRMAN (interposing). As a practical lawyer you know what that means.

Mr. THOM. This did not come just out of my head, but we were informed there is serious apprehension on the part of our traffic and operating men that there might be a burden, and probably would be a burden——

The CHAIRMAN (interposing). This is the same as the case of prison-made goods.

Mr. THOM. I realize that, but you also know that a bill is first introduced and then has to be enacted into law, and sometimes it is amended in the light of experience.

The CHAIRMAN. You have not been able to get any amendment on that, have you?

Mr. THOM. No; this is our first attempt.

The CHAIRMAN. So far as I am concerned, I do not think there is much basis, or much necessity for your apprehension and concern about the matter.

Mr. THOM. I am very sorry to hear you say that, Mr. Chairman, because we are extremely serious in pressing this amendment.

The CHAIRMAN. I do not think you need be concerned.

Mr. THOM. And the balance of the proposal is this:

(b) A common carrier, if such goods, wares, or merchandise are labeled in conformity to the requirements of the act, shall have the right to require a certificate as specified in paragraph (a) (2) of this section and shall not be liable for any penalties or damages for its refusal to accept a shipment by reason of the failure or refusal of the shipper to deliver such certificate.

That is all I have to say. I thank you very much.

The CHAIRMAN. Who is the other gentleman who wanted to be heard?

Mr. OLIVER. I wish to be heard, Mr. Chairman.

The CHAIRMAN. How long is your statement?

Mr. OLIVER. About five typewritten pages.

The CHAIRMAN. The Senate has been in session now for some time and the Members have had to leave. Would it not be possible for you to give a brief outline of your statement and then file that statement for the record?

Mr. OLIVER. If the chairman so feels, why, of course, I will file the statement, but——

The CHAIRMAN (interposing). Owing to pressure of business on the floor of the Senate the other members of the committee have had to leave, and I feel that I must go over to the Senate in a very few minutes.

Mr. OLIVER. I understand that on your list of witnesses the representatives of labor were placed last, which usually leads to this kind of thing.

The CHAIRMAN. Oh, I do not think that you were placed last on the list.

Mr. OLIVER. I have just been told by your clerk that we were placed last on the list; and, quite naturally, railroad labor is interested in child-labor legislation.

The CHAIRMAN. Of course, a list of persons wishing to appear had to be made up, and I understand that you were to confer with others and that a list would be made up according to suggestions offered.

Mr. BROPHY. Mr. Chairman, I am perfectly willing to file my statement, and would prefer that, if possible, Mr. Oliver be permitted to make his statement.

The CHAIRMAN. All right. Mr. Oliver, the clerk of the committee tells me that he understood you were working in conjunction with those groups favoring the Barkley bill who requested that you and Mr. Brophy be the last witnesses. Seeking to comply with their requests, we have not called you until now.

Mr. OLIVER. Then that was a misunderstanding.

The CHAIRMAN. Mr. Brophy will put in his statement.

STATEMENT OF JOHN BROPHY, DIRECTOR OF THE COMMITTEE FOR INDUSTRIAL ORGANIZATION

Mr. BROPHY. Organized labor has been trying for many years to stop the employment of children in factories and mines. It is a disgrace that at this stage of technological advance it is necessary once more to argue for the adoption of an effective Federal act to protect American boys and girls from the evils of industrial exploitation.

The vast majority of the American people have a common interest in protecting our youth, and yet our efforts have been blocked. We in the trade unions have waited too long to be put off now with an act that regulates child labor in title only. An entire generation has grown to maturity since the first Federal Child Labor Law of 1916 was struck down by the United States Supreme Court in a 5-to-4 decision.

Organized labor has learned by long experience that only Federal action and Federal standards will bring the desired result. To wait for State action means more years of delay with each legislature declaring it cannot act before neighboring States are ready. We know too that endless methods of evasion will be attempted and that a simple machinery of enforcement is required to make the law stick.

The Wheeler-Johnson bill is highly unsatisfactory in the light of these lessons. It relies on action by the 48 States to supplement the Federal act. While in one section the bill seems to forbid interstate transportation of goods produced by children under 16, in another section it declares that such shipment is prohibited only if the sale of such goods is prohibited by State law and if the goods are not labeled as made by child labor. States which for various reasons have been slow to limit child labor would still provide markets for the products of young boys and girls.

The task of enforcing the Wheeler-Johnson plan would be an impossible one. Shipments would have to be traced in the light of 48 different State laws, and the task of labeling the products is far more difficult than in the case of prison-made goods, the making of which is supervised and limited.

The Barkley bill comes much closer to meeting the situation, although it is not perfect. It forbids interstate shipment of goods produced in establishments employing child labor, and sets up a uniform minimum-age standard of 16 years for the entire country. It thus sets a higher level than the Wheeler-Johnson bill, and it would furthermore be more easily enforced. Since a representative of labor's Non-Partisan League is appearing at this hearing, it is unnecessary for me to present in greater detail the arguments on the two bills, or the amendments that might be made in the Barkley bill. The score of international unions in the Committee for Industrial Organization are represented likewise in labor's Non-Partisan League. My reason for appearing is to stress the importance that these great international unions and their millions of members place on effective child-labor legislation and throw our support to the arguments advanced by labor's Non-Partisan League.

We want action that means something, not a sop to sentiment aroused by years of delay. If the Constitution must be amended in order to make decent Federal legislation possible, let us either amend the Constitution or make necessary changes in the Supreme Court. Let us now, however, pass what seems to be an effective act and hope that it will secure the approval of the Justices. The Barkley bill, especially if amended as Labor's Non-Partisan League suggests, gives greatest promise of bringing about the long-needed Federal action to end child labor in factories and mines.

The CHAIRMAN. You may proceed, Mr. Oliver.

STATEMENT OF E. L. OLIVER, EXECUTIVE VICE PRESIDENT OF LABOR'S NON-PARTISAN LEAGUE

Mr. OLIVER. Labor's Non-Partisan League favors the complete abolition of child labor in industry and in Government service.

The CHAIRMAN. What is Labor's Non-Partisan League?

Mr. OLIVER. It is a league supported by labor unions for political action.

The CHAIRMAN. And it was organized during the last campaign?

The CHAIRMAN. All right. You may proceed with your statement.

Mr. OLIVER. Labor's Non-Partisan League favors the complete abolition of child labor in industry and in Government service.

The CHAIRMAN. To what extent in Government service?

Mr. OLIVER. Wherever it occurs.

The CHAIRMAN. Do you object to the employment of boys and young men as pages in the Senate?

Mr. OLIVER. Yes. We also object to the recruiting of any person under the age of 18 for military purposes; the admission of anyone under the age of 18 to any kind of military training, in the schools or anywhere else.

The CHAIRMAN. Are they recruited for military purposes?

Mr. OLIVER. Yes, sir. The Navy accepts enlistments under 18.

Senator JOHNSON of Colorado. Do you object to their being accepted in C. C. C. camps?

Mr. OLIVER. Yes; under the age of 18, for doing labor; yes, sir.

The CHAIRMAN. The C. C. C. camps take persons under 18 all over the country, do they not?

Mr. OLIVER. If it interferes with their schooling or in any other manner as child labor ordinarily does, we object to it. The position of the league is primarily based upon humanitarian grounds. To employ children in industry cannot but undermine their health, interfere with their schooling, and in general work irreparable harm to their whole lives. No person with any consideration for the welfare of children could fail to oppose their employment in industry.

Recognizing that the strongest objection to child labor is humanitarian, and that this basis is well understood, we should like to indicate certain other effects which ought to be given consideration in drafting legislation to meet the problem.

The CHAIRMAN. It is not only objectionable from a humanitarian standpoint, but the use of child labor should be stopped from the standpoint of interference with men and women who should be permitted to engage in employment.

Mr. OLIVER. It is objectionable from the standpoint of economics also. And that was what I was about to say.

The CHAIRMAN. All right. Proceed.

Mr. OLIVER. Among the many objections to the employment of children should be noted the fact that it directly reduces rates of pay in industry. Children are not able to protect themselves in individual bargaining with employers and have no knowledge of wage standards. Where parents and children are employed, the tendency of employers is to think in terms of total family income instead of in terms of adequate wages for the head of the family. Moreover, there is a tendency to transfer rates of pay from occupations in which children are necessarily underproductive to those in which they may be driven at a speed approximating that of adults. These and other characteristics of child labor force down the rates of pay for all workers in establishments employing children.

It is obvious also that the availability of children tends to decrease the employment of adults; we have now large numbers of children working in industry while their parents are unemployed.

Another major consideration is that the extension of labor organization, which is to us the condition of all labor progress, is hampered and may be prevented by the employment of children. These young people do not understand, and they cannot be expected to understand, as well as an adult, how great is the need for unionism and collective bargaining. Child labor thus operates directly to depress all labor standards in the plants where the children work.

Through the mechanism of competition, low standards of wages, and working conditions in those establishments or those communities where children are employed inevitably affect wages and standards in other establishments and areas. The existence of child labor in any part of the country is therefore a menace to the economic position of labor throughout the country. It is this competitive factor which makes Federal handling of the child-labor problem absolutely necessary and which requires that any legislation shall be uniform and uniformly enforceable.

Another complication, in the regulation of child labor, is that many States are still preponderantly agricultural. For people with an agricultural background, and that would include a large proportion of the legislators in agricultural States, it is difficult to understand how the employment of children in industry can work the serious harm which it actually does.

The CHAIRMAN. What States do you refer to? Certainly you do not refer to Montana.

Mr. OLIVER. No, sir; that is conducted largely by the mining and industrial development, from a few points in Montana.

The CHAIRMAN. Where are the few points in Montana? Let me say to you that the child-labor law was passed not only by reason of the request of labor, but it was supported by farm organizations.

Mr. OLIVER. I think Montana is almost alone among the agricultural States as having standards that are equal to those in States that have enacted progressive child-labor legislation. But it is not true in agricultural States generally.

The CHAIRMAN. What agricultural States have you reference to?

Mr. OLIVER. Among States with a minimum wage for work in factories and stores at 14 years are Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Vermont, Virginia—they are largely States I would consider to be predominantly agricultural.

The CHAIRMAN. New Hampshire is not a State that you would consider predominantly agricultural, would you? I know enough about it to know that it is not predominantly an agricultural State, because I have lived near there, and have often been in New Hampshire, and know that it is rather an industrial or manufacturing State.

Mr. OLIVER. That may be so, but——

The CHAIRMAN. And some of the other States you have mentioned are also predominantly manufacturing States.

Mr. OLIVER. It would depend upon the balance of production.

The CHAIRMAN. I agree with you that Mississippi, North Dakota, South Dakota, and Arkansas, and some others may be predominantly agricultural.

Mr. OLIVER. With the exception of Montana all of the States might be considered predominantly agricultural.

The CHAIRMAN. We have a more enlightened public opinion out there.

Mr. OLIVER. We have always thought so.

The CHAIRMAN. You may proceed.

Mr. OLIVER. Consequently, standards of child-labor regulation are lower in those States; many of these predominantly agricultural communities have come to have considerable industrial development, in which all labor standards depend to some extent upon the action of State governments.

The simple and sensible way to deal with this situation was, and still is, through Federal legislation establishing general standards to be applied directly to all industries throughout the country. This approach to the problem has been blocked by the opposition of a majority of the members of the Supreme Court. Early advocates of child-labor legislation sought to get around Supreme Court prejudices by offering an amendment to the Constitution of the United States. This method of changing our constitutional framework now holds some prospect of success; any new legislation should be so planned as not to diminish the possibility of adopting the child-labor amendment.

In our opinion, passage of the Wheeler-Johnson bill would be highly undesirable under present conditions. The bill seems to require further legislation in the several States, legislation which would have to follow the line taken in the prison-made goods precedent.

Mr. OLIVER. The wide variation in child-labor attitudes, reflected as it is in existing child-labor legislation, would almost certainly find similar expression in any future legislation. The tendency toward uniformity if there were such tendency, would probably be in the direction of the lower standards rather than the higher. Certainly there would be wide diversity in State laws.

The CHAIRMAN. Why do you make that statement?

Mr. OLIVER. Because I think it is correct.

The CHAIRMAN. If you would stop for a second to think it out I do not believe you would make any such statement. Do you mean

to say that the people are going to lower the standards for child labor in this country? Is that what you think?

Mr. OLIVER. I did not say if this bill——

The CHAIRMAN (interposing). You said if one of these child-labor bills are enacted into law the tendency would be to lower the standards. What do you mean by that?

Mr. OLIVER. I said the tendency toward uniformity is toward lower standards.

The CHAIRMAN. Why, that is ridiculous on the face of it. Any sensible man or woman, any person who knows anything about the sentiment of the country, knows that that is not true. You cannot give a concrete example of any State in this country where they have adopted a child-labor law and then have reduced the standard.

Mr. OLIVER. The basis on which child-labor laws are enacted——

The CHAIRMAN (interposing). Do you know of any State where they have reduced the standard afterward? Can you give me the name of any State where they have enacted a child-labor law with a certain standard and then have lowered that standard afterward?

Mr. OLIVER. The only places have been as a result of the action of the Supreme Court. That has been Federal action, where it was knocked out.

The CHAIRMAN. That is hardly a fair or a correct statement.

Mr. OLIVER. The Supreme Court did declare the law unconstitutional——

The CHAIRMAN (interposing). Of course, but they did not reduce the standards as provided by the laws of that particular State.

Mr. OLIVER. They reduced the standard in any State that had——

The CHAIRMAN (interposing). I am talking now about State laws.

Mr. OLIVER. I do not know of any State law which changed the standard for the employment of children in their own State.

The CHAIRMAN. Do you think that the enlightened public opinion in any State would permit them to reduce the standard?

Mr. OLIVER. I believe you will find in almost every State, if you attempt now to pass laws regulating the sale of goods made by child labor, there will be the contention advanced that laws affecting the children of other States are not as strong as what is proposed for the children of their own State.

The CHAIRMAN. Stop and think of this situation: There stands the State of Massachusetts, and I happen to come from that State, and it has lost its business because manufacturers went down to North Carolina, South Carolina, Georgia, and other Southern States, in response to the urging of southern chambers of commerce to come down there and use their cheap child labor. So the manufacturers moved their plants down there. Do you mean to tell me that Massachusetts, wishing to keep those child-labor-made goods out, is going to lower their standards? Will Massachusetts permit child-labor-made goods to compete and thus force her manufacturing plants from the State? Isn't she going to raise her standard and say to North Carolina, South Carolina, Georgia, and other States: You cannot ship into our State goods made under a lower standard and compete with manufacturers in our State.

Mr. OLIVER. I think you will find that situation true in six or seven of the Northeastern States, but——

The CHAIRMAN (interposing). Not only in six or seven Northeastern States, but in every State in the Union will that take place. Every State will be jealous of its own industries and will want to have standards higher so that these other fellows cannot ship in goods in competition with their own manufacturers.

Mr. OLIVER. I do not think that would follow at all.

The CHAIRMAN. I cannot understand your reasoning.

Mr. OLIVER. The reason is this, that any legislator who originally opposed the adoption of a child-labor law in his own State, when he is confronted with a law which would affect the sale of products made in other States, would certainly use the argument that the best protector of the children in that other State is the legislature of that State, and that the standards of that State, and probably of any other State that might be shipping goods into the State in question, are to be set by those regulating child labor in that State.

The CHAIRMAN. That would seem to me to be an illogical argument.

Mr. OLIVER. There are a lot of ridiculous arguments made by people who want to continue child labor but who want to cloak that wish with some contrary statement.

The CHAIRMAN. Do you put me in that class?

Mr. OLIVER. No, sir.

The CHAIRMAN. Well, you better not put me there now or at any other time. I am perfectly willing to compare my record with the record of a lot of people who are drawing down salaries at the present time and claiming to be such great liberals. Now, the truth about it is: You do not want this law passed. You want the other law passed, isn't that it?

Mr. OLIVER. I want the Barkley bill.

The CHAIRMAN. All right. Proceed with your statement.

Mr. OLIVER. The enforcement machinery and method contemplated by the Wheeler-Johnson Act, with the exception for the moment of sections 4 and 5, is wholly impracticable in the face of such diversity. The prison-made goods precedent, so far as enforcement is concerned, is entirely valueless. Prison production is supervised by public officials and is confined to relatively few commodities.

The CHAIRMAN. The National Committee on Prisons and Prison Labor, and on whose executive committee are several prominent labor leaders and others of national standing inform me that there has been no difficulty in enforcing the Ashurst-Sumners Act, but did you say all supervised by Federal officials?

Mr. OLIVER. I mean public officials.

The CHAIRMAN. Do you mean prison-made goods?

Mr. OLIVER. The prison-made goods case cannot be met except by some degree of cooperation of public officials, and to that extent at least there must be some public supervision.

The CHAIRMAN. Go ahead.

Mr. OLIVER. The goods now being produced wholly or in part by child labor are much more diverse.

Moreover, many commodities which undergo successive processing, may use child labor in any one of those processes. The manufacture of a cotton garment, for example, includes all of the ginning, spinning, weaving, and printing of the cloth, and the manufacture of all of the elements which go into that garment, from thread to dyes.

It seems wholly impractical to trace the use of child labor for labeling purposes through all this diversity. The Barkley bill—S. 2226—will be affected by this factor also, but in a lesser degree than will the Wheeler-Johnson bill.

The CHAIRMAN. Suppose a manufacturer in any plant in the United States starts to ship his goods in interstate commerce; he has to brand them, does he not?

Mr. OLIVER. If he uses child labor.

The CHAIRMAN. Certainly. And if he does not brand them he is guilty of violation of the law and subject to prosecution.

Mr. OLIVER. Yes, sir.

The CHAIRMAN. What is the difficulty about that?

Mr. OLIVER. Because almost all of the manufactured products in the United States today go through a process of being split up into several parts. The manufacturer of the raw material may ship a product properly labeled into a State in which the law does not prohibit the sale of his article as labeled or as actually manufactured. The article is then sold, and there is nothing in the bill that requires an article sold in that State to carry a label when first shipped in interstate commerce.

The CHAIRMAN. Because Congress cannot control, generally, intrastate activities under the Constitution? But the article processed in the second State must bear a label if it again enters interstate commerce.

Mr. OLIVER. Whatever the reason is, but there is no way to prevent the use of child labor in the processing.

The CHAIRMAN. It doesn't make any difference where it comes from, articles made in whole or in part by the use of child labor have to be marked.

Mr. OLIVER. But there is no way in which to reach it except the manufacturer of the final process. The material, especially if there is an undefined sale, is shipped in, and is different from the thing which is produced.

The CHAIRMAN. You are saying "Here is a man who first sends goods in partly made. Those goods have to be branded when they come to his factory."

Mr. OLIVER. Only if they are going to move in interstate commerce.

The CHAIRMAN. All right. But if they are going to move in interstate commerce they have to be branded. The second man who takes those goods, if he takes them under any circumstances and uses them and ships them, he is guilty under the law.

Mr. OLIVER. Here is what happens: Where you have an article which is subject to several processes before it is completely manufactured, each processer will mark that article, or I mean will market the article through a jobber, and that jobber buying the article and selling it in his own State, there is no clause to prevent him from removing any label and repackaging it in his own State and selling it without that label.

The CHAIRMAN. Suppose the last man who ships that article ships it in interstate commerce.

Mr. OLIVER. Who buys it unlawfully?

The CHAIRMAN. I do not care how he buys it, if he ships it in interstate commerce unlabeled.

Mr. OLIVER. If you have a broker——

The CHAIRMAN (interposing). If it is handled by a broker he is still liable.

Mr. OLIVER. In theory he may be liable, but it is not enforceable.

The CHAIRMAN. Of course, it is enforceable. Are you a lawyer?

Mr. OLIVER. I am not guilty.

The CHAIRMAN. If you were, and if you knew anything about the prosecution of cases, you would not make that statement.

Mr. OLIVER. I have heard lawyers make such statements.

The CHAIRMAN. I do not care who the lawyer is who made such a statement; in my judgment he is wrong about it, or has not read the bill. Let me call your attention to subdivision (4) [reading]:

(4) A summary statement of the kind or kinds of work performed by children in the manufacture, production, or mining of such goods, wares, or merchandise and the type or types of places where such work was performed. In case a label conforming to the requirements of this section has been removed from goods, wares, or merchandise, or from a package containing the same, or such goods, wares, or merchandise have been removed from a package bearing such a label, prior to the time such goods, wares, or merchandise shall be offered for shipment in interstate commerce, the information set forth in such label pursuant to the requirements of clause (4) of the proceding sentence or of this sentence shall be incorporated in a new label affixed to such goods, wares, or merchandise so offered for shipment, or to the package containing the same if they be packaged, together with a statement that such information was taken from another label. The incorporation of such information and statement in the new label shall constitute compliance with the requirements of said clause (4) unless child labor shall have been used in connection with processing or fabricating such goods, wares, or merchandise after removal of the label therefrom or from the package containing the same or after removal thereof from the package bearing such label, as aforesaid, in which event the incorporation of said information and said statement shall be a requirement as to said new label in addition to those defined by said clause (4).

Mr. OLIVER. That would apply and become effective only if the person actually carrying on the transaction were to ship goods in interstate commerce.

To place upon the statute books now, an unenforceable regulation which may give the impression that child labor is being effectively regulated, cannot but interfere with the prospect of really successful regulation.

Specific defects in the Wheeler-Johnson bill include the failure to deal with the labor of persons between 16 and 18 years of age. Many States regulate such labor, and the Barkley bill proposes certain regulation relative to persons between 16 and 18 years.

The CHAIRMAN. Apparently you would still be opposed to S. 2226 even though it contained such a provision.

You would be opposed to any bill not sent down by the Department of Labor, it would seem to me.

Mr. OLIVER. I would say for myself that there is nothing that would be more suspect to me than one originating in the Department of Labor.

The CHAIRMAN. You would suspect it?

Mr. OLIVER. Yes, sir; and nothing would make it more suspect.

The CHAIRMAN. Well, now, you surprise me. Why do you suspect the Department of Labor?

Mr. OLIVER. Well, I have feeling, and it may be wholly unjustified, but the reason why I would be suspicious of legislation which I thought originated there is that I have a feeling the Department of Labor does not quite sufficiently appreciate the effect on labor con-

ditions, the interaction between labor conditions and labor organizations. I do not believe proper consideration is given to the circumstances and functioning of labor unions.

The CHAIRMAN. Do you mean by the Department of Labor?

Mr. OLIVER. Indeed, the Department of Labor itself.

The CHAIRMAN. You think they do not know anything about the functioning of labor organizations?

Mr. OLIVER. I do not say that, but I do say I think they do not give proper consideration to it.

The CHAIRMAN. In what way?

Mr. OLIVER. Well, it enters into almost everything that is done in the Department of Labor. Specifically——

The CHAIRMAN (interposing). Specifically what?

Mr. OLIVER. Well, we had some discussion sometime ago about the statistical service of the Bureau of Labor statistics, about statistics prepared by the Bureau, and that are used——

The CHAIRMAN (interposing). Are what?

Mr. OLIVER. That are used, and could be used more, in the settling of labor controversies. They are very seldom compiled in a way that would make them as useful as they would be if the persons compiling them had that thought fresh in their minds.

The CHAIRMAN. In other words, you do not think the statistics they have can properly be used for settling labor disputes?

Mr. OLIVER. No. I do not think they compile statistics in such a way as they can be used as effectively as they might be used if they were being compiled by persons informed on the use to which they are to be put.

The CHAIRMAN. Specifically, what other thing?

Mr. OLIVER. Well, the most of my contacts have been only very recently with that particular branch of the Department of Labor.

The CHAIRMAN. What else specifically is there? You said "specifically" and then seemed to start to say something but did not. What other specific matter have you in mind?

Mr. OLIVER. The Department of Labor, for instance, has made a study of the standard of living in the United States, recently. It was made in 1934, when conditions were so abnormal that the results of the study would not reflect what is the American standard of living, a typical situation in the country.

The CHAIRMAN. I might say to you that I have been trying to get the Works Progress Administration to set up a statistical bureau in Montana for the purpose of getting facts concerning labor, so that we would be able to use them more effectively in the event of labor difficulties out there. I am surprised to hear what you have to say about the Department of Labor, because I did think they were doing everything they could in the matter of labor disputes. But I may be wrong about that

Mr. OLIVER. Possibly I have not made myself clear. I have been for the last 10 years engaged in the railway industry, with the Brotherhood of Railway Clerks, as you may remember. Railway-labor organizations attempt to settle the most of their troubles by arbitration, or by negotiation, which is almost like arbitration, in that facts are prepared by both groups and arguments made on the basis of the actual facts. And also for presentation before congressional committees they try to get the facts. For these purposes the

Department of Labor statistical service is not as useful—in fact it is quite definitely harmful.

The CHAIRMAN. You would not say you would suspect any bill that came from the Department of Labor of being based on anything of that kind, would you?

Mr. OLIVER. No, sir. I advance that thought as, it seems to me, something that exists in the Department of Labor, which would make me read very carefully anything proposed by the Department of Labor before endorsing it. I do not think it would give proper information affecting labor organizations.

The CHAIRMAN. All right.

Mr. OLIVER. If the principle of the Wheeler-Johnson bill were to be extended to persons between 16 and 18 years of age, its confusion would be even worse confounded, since the attitudes and legislation of individual States relative to this group are much more varied than are those relative to younger children.

The CHAIRMAN. Let me interrupt you there. You are not in favor of that provision of the Barkley bill?

Mr. OLIVER. No, sir; not that provision.

The CHAIRMAN. I thought you were in favor of that provision in the Barkley bill that provides for the prohibiting of labor between the ages of 16 and 18 where it is in hazardous occupations.

Mr. OLIVER. I am in favor of that provision, but the wording used here is the principle of the Wheeler-Johnson bill regulating prison-made goods.

The CHAIRMAN. But you are in favor of that bill?

Mr. OLIVER. Yes.

The CHAIRMAN. If this bill is amended, it will have the provision of the Barkley bill with reference to hazardous occupations. Do you oppose that going in?

Mr. OLIVER. If it is put in in exactly the form that it is in the Barkley bill, I do not oppose it.

The CHAIRMAN. How else do you think it would be put in?

Mr. OLIVER. It might be on the basic principle of that legislation——

The CHAIRMAN. Did you hear anybody make that suggestion?

Mr. OLIVER. No.

The CHAIRMAN. How could that be put in there in that fashion?

Mr. OLIVER. I will try to show you. The first section of the Wheeler-Johnson bill, for example, says [reading]:

> That all goods, wares, and merchandise manufactured, produced, or mined on or after January 1, 1938, wholly or in part through the use of child labor, transported into any State or Territory of the United States and remaining therein for use, consumption, sale, or storage, shall upon arrival and delivery in such State or Territory be subject to the operation and effect of the laws of such State or Territory to the same extent and in the same manner as though such goods, wares, and merchandise had been manufactured, produced, or mined in such State or Territory—

And so forth. The only limitation upon that provision is that child labor is defined later on as being the labor of children under 16. If you would amend your definition and make it the employment of a human being under the age of 18 years, you would then have a provision which would extend the provision of the Wheeler-Johnson bill to the period between 16 and 18 years of age. That is the only

way you could do it, and if it were done in that way it would only make the confusion, which I believe would follow the adoption of that principle, greater and more general.

The CHAIRMAN. Why?

Mr. OLIVER. Because there is a wider variation in the provision limiting labor of children between 16 and 18 than there is limiting the labor of children under 16.

The CHAIRMAN. I do not like to argue with you, but again I say that if we raise it to 18 it will not confuse it in the slightest degree. It would simply mean that we would put in a provision for 18 years of age and would say it would comply with the laws of that particular State.

Mr. OLIVER. And as the laws of various States are diverse, you have greater diversity that the manufacturer must observe.

The CHAIRMAN. It would not affect the laws of the State at all.

Mr. OLIVER. It would affect the manufacturer producing the goods.

The CHAIRMAN. Well, go ahead.

Mr. OLIVER. The Wheeler-Johnson bill includes in its section 5 a clause which would seem to cover many of the points in the Barkley bill. Although it might seem, upon first consideration, that the combination of the two would be desirable, since the Supreme Court may declare the principle of the Barkley bill unconstitutional and certain of the clauses of the Wheeler-Johnson bill seem to have greater hope of Supreme Court approval, this position is in fact unjustified.

The CHAIRMAN. You mean by that that there is more likelihood of the Supreme Court holding the law with reference to prison-made goods unconstitutional?

Mr. OLIVER. No, sir; that is not the proposition.

The CHAIRMAN. Do you think they would hold it constitutional?

Mr. OLIVER. I think it would depend upon the opinions of the men who then sat on the Court.

The CHAIRMAN. Don't you know that they have held this principle constitutional in two or three cases?

Mr. OLIVER. I don't think that makes any difference.

The CHAIRMAN. You don't think so?

Mr. OLIVER. Not a great deal. They reverse themselves whenever——

The CHAIRMAN. Oh, no.

Mr. OLIVER. If the principle underlying the Barkley bill is to be called unconstitutional by the majority of our Supreme Court, it will be much better for the future of child-labor legislation that we be left without regulation than that we should have superficial, ineffective, and unenforceable statutes to diminish the force of the demand for adequate legislation. It is better that the responsibility for preventing child-labor legislation be laid at the door of our Supreme Court than that the people of the country should gain the erroneous idea that child labor can be prevented, because impracticable and futile legislation can survive Supreme Court prejudices.

The CHAIRMAN. I am amazed, as a matter of fact, at your statement—that you would come before a committee of Congress and make a statement of that kind. All you are seeking to do is to destroy the confidence of the people in the courts.

Mr. OLIVER. Oh, no, sir; that has been done long ago.

The CHAIRMAN. And you want to continue to do it.

Mr. OLIVER. No; I want to do the reverse. I believe the Supreme Court has destroyed the confidence of the people itself, and to restore that confidence they have to be in some fashion reformed.

To sum up this point——

The CHAIRMAN. The only people who are destroying the confidence of the Court are people who are making statements such as you are making here, and seeking to destroy the confidence of the people in the courts of this country. And let me say this to you, that if you had been through half of the experiences that I have had in fighting for labor and for liberal causes, actually fighting, in Montana, during the past days, you would feel that you would want to cling to some of the decisions of the Supreme Court—you would want to cling onto them. The trouble is that some of you fellows have not had any actual experience. You have not gone through what some of us have gone through.

Mr. OLIVER. I don't want to take this occasion to say anything about what I have been through, but I would match my experience with yours in the number of times I have been in prison.

The CHAIRMAN. How many times?

Mr. OLIVER. I have been arrested and put in jail about 15 times.

The CHAIRMAN. Whereabouts?

Mr. OLIVER. In Illinois, Iowa, and Missouri.

The CHAIRMAN. What for?

Mr. OLIVER. For violating injunctions; that is to say, I was accused of violating injunctions. Once I was arrested on a charge that had no relation at all to the labor situation, but it was a direct frame-up.

The CHAIRMAN. What was that?

Mr. OLIVER. There was a strike of which I was in charge, in Illinois and Iowa, on the State line between the two, and I was arrested and accused of having done something which was a criminal act.

The CHAIRMAN. What was that?

Mr. OLIVER. I think it is unjust to ask it and expect me to answer it in one sentence.

The CHAIRMAN. Were you convicted?

Mr. OLIVER. No. The charge was dismissed. Then I was arrested after being assaulted by a slugger in the strike in St. Louis—a company slugger. I was arrested and put in jail, after being slugged, by a squad of St. Louis police. I cannot remember all the times that I have actually been assaulted or jailed.

The CHAIRMAN. You never were convicted, were you?

Mr. OLIVER. No. In the Nonpartisan League in the Northwest, which you may remember——

The CHAIRMAN. I remember it very well. I assisted in its organization in Montana, so I ought to know something about it.

Mr. OLIVER. I organized one in Wisconsin and one in Minnesota. My automobile, which I was buying on terms through the league, was destroyed, virtually. It was all painted yellow.

The CHAIRMAN. I am amazed that one who has had your experience in the Non-Partisan League days would want to see the Supreme Court packed so that it would become subservient to one man. Do you realize that Congress influenced by a wave of hysteria might conceivably enact laws seriously abridging the rights of free

speech, thought, and assemblage which a subservient or packed Supreme Court might uphold?

Mr. OLIVER. Nothing can make the Supreme Court subservient to one man. The very progress of the present program indicates that one man cannot ever get complete control of the Supreme Court.

To sum up this point, it must be said that to put upon our statute books legislation of the type proposed in the Wheeler-Johnson bill will be useless, and can only retard and perhaps wholly prevent the adoption of adequate regulation in their field.

The Barkley bill, as has been noted, will have many difficulties in its enforcement, and is not to be compared with a direct prohibition of the employment of children under 16 years of age in industrial establishments. To the extent that this bill is also an attempt to circumvent the prejudices of the Supreme Court majority——

The CHAIRMAN. The Supreme Court majority, did you say?

Mr. OLIVER (continuing). Yes. And to the extent that its consequent indirection lessens the possibility of enforcement, the bill is imperfect. If we are, however, to try to frame legislation under the handicap of existing Supreme Court alinements, it is probably as good as could be drafted. Certain minor amendments seem desirable. The 60-day clause in the first section of the act should, we believe, be taken out of the bill. Many types of establishments manufacture their entire year's output within a short period and ship the great bulk of that output more than 60 days subsequent to its production. This is especially true of canneries. The bill would also be improved by having a more complete list of hazardous industries. Perhaps a preferable way to take care of this point is to leave the provision open so that other industries may be added as their processes are found to be too hazardous for employment of people under 18 years of age.

The CHAIRMAN. As a matter of fact, under the Barkley bill they could manufacture their goods, keep them in season, and ship them out, notwithstanding the fact that they are made by child labor.

Mr. OLIVER. Yes; but that section we have asked to have amended to take out all reference to the 60-day clause.

The CHAIRMAN. There should not be any reference to 60 days?

Mr. OLIVER. No, sir. Section 2, paragraph (d), should be amended to permit direct handling of complaints by representatives of employees.

The CHAIRMAN. What do you mean by that?

Mr. OLIVER. Well, I will try to find the section. I believe it has been wrongly worded. It is something to the effect that the Secretary of Labor—here is the provision [reading]:

> Whenever the Secretary of Labor shall report any violation of this act to the Attorney General and furnish him with substantial evidence in support thereof, the Attorney General shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay for the enforcement of the penalties in such cases herein provided.

That should be amended, we believe, so that there would be specific provision at least for the handling of complaints by the representatives of employees.

The CHAIRMAN. Your feeling is that with this provision in, you would have to take such complaints up to the Labor Department and the Labor Department would have to approve them before they went to the Attorney General?

Mr. OLIVER. I am not a lawyer, but I do not believe they could keep labor organizations away from the Attorney General if we had complaints to make. But that would probably lead individual workers to think that that method was prescribed.

The CHAIRMAN. You ought to be able to say to the United States attorney in a community, "Here is a violation of the child-labor law, and we want you to prosecute." You should not have to send it to the Department of Labor and have the Department of Labor turn it over to the United States attorney.

Mr. OLIVER. No, sir; and we feel that while the law might not actually require that, an individual worker might so interpret it.

The CHAIRMAN. I think there is a good deal in what you say. I do not see any necessity for that at all. Any citizen of the United States who sees a violation of the law could go direct to the United States district attorney and submit it to him, and if he has proof, then the United States attorney ought to go ahead and prosecute, regardless of whether it is submitted through some department or not.

Mr. OLIVER. My suggestion there is that because so many individual workers do look to their unions to protect them, they might otherwise be afraid of discrimination; and if provision were made for the individual worker or his representative——

The CHAIRMAN. As a matter of fact, the only objection at all that I can see to the provision is that it might give an excuse to the United States district attorney, under this bill, to say to the labor union, "Well, it says that whenever the Secretary of Labor shall report any violation", and so forth. My own view about it is that that is the way it might be construed and it might be held to be a limitation. A lot of United States attorneys might say, "It has got to come through the Department of Labor before I will follow the case up."

Mr. OLIVER. I have that very definite feeling also.

The CHAIRMAN. I do not think there is any doubt about it. I do not think it should be there.

Mr. OLIVER. I would not feel that with it there, there would be any way you could prohibit the prejudice of the United States attorney, actually, in effect.

The CHAIRMAN. No; and as a practical matter that is what will undoubtedly happen.

Mr. OLIVER. That is the fear I have with respect to it.

There seems to be no necessity for specific mention of the Children's Bureau as an enforcement agency. From the standpoint of labor it would be wholly desirable that the special interest of workers and their organizations in this legislation be recognized. Experience under the N. R. A. indicates that the enforcement of labor standards depends largely upon the existence and the cooperation of labor organizations. The creation of a Child Labor Board to include representatives of labor and employers, and, possibly, the chief of the Children's Bureau as chairman, would probably improve the enforcement of the act.

The CHAIRMAN. Let me ask you this. Have you drafted a provision along that line?

Mr. OLIVER. Not specifically; no.

The CHAIRMAN. I think that since you have suggested it, what you ought to do, for the benefit of the committee, is to draft a suggested amendment. I intend to appoint a subcommittee to consider all these proposals and try to work out from all of these proposals the best possible bill and the strongest bill that we can get. I would suggest to you that if you have some proposals you prepare proposed amendments and submit them to the clerk and they will be considered.

Mr. OLIVER. We will be very glad to do that.

Child labor is an evil of the first magnitude. Its cruelties and its economic unwisdom demand that something be done by the Federal Government to prevent the employment of children. It will be much better, however, that the evil be left frankly and honestly unregulated by the Federal Government than that there be unenforceable legislation to give the impression that child labor is under control. Primarily we must have an amendment to the meaning of our Constitution, either by amending the Constitution itself, directly, or by changing the interpreting agency. In default of such amendment, the Barkley bill seems to offer the best prospect of immediate limitation upon child labor in the United States.

The CHAIRMAN. Do you think we should change the Constitution by changing the interpreting agency?

Mr. OLIVER. Either by amending the Constitution itself directly or by changing the interpreting agency.

The CHAIRMAN. Which do you think is the right method?

Mr. OLIVER. Both.

The CHAIRMAN. Where do you think labor is going to get, as a practical matter, in this country, if labor takes the position that the Supreme Court ought to amend the Constitution by interpretation?

Mr. OLIVER. Senator, it does. We face the fact.

The CHAIRMAN. You think it does. You want men placed on the Court who would interpret the Constitution in accordance with the majority of the people of the country?

Mr. OLIVER. So long as the Court has that power; yes, sir.

The CHAIRMAN. You want it to do that? Let me say this to you. That is the most dangerous thing that could possibly happen to labor or to any organization of any kind in this country. That is the most dangerous thought and the most dangerous statement for labor that could possibly be made and be urged by labor in this country.

Mr. OLIVER. I think, Senator, you misunderstand my meaning. I believe the Supreme Court can safely be left one degree further removed from the popular will than are Congress and the President, and I am presenting only my personal opinion. I do believe, though, it should not be allowed to get so far out of step with the popular will as it now is, and some means must be found to prevent that, so long as the Supreme Court is to have the power to declare unconstitutional acts passed by Congress and approved by the President.

The CHAIRMAN. You think the Supreme Court should not have the power to declare acts unconstitutional that are passed by Congress and approved by the President?

Mr. OLIVER. That is my opinion. I mean that it should not have that power without further review by some democratic agency.

The CHAIRMAN. You think it should not have the final power?

Mr. OLIVER. No. I say, that is my personal opinion.

The CHAIRMAN. I understand it is your personal opinion. I have heard a lot of such statements made, and I just want to say to you, for your own benefit and for the benefit of some of these people, that you remember out in the Northwest we had Governors and legislators who wanted to pass laws to prevent free speech and free assemblage. If such a thing should happen, then the Supreme Court would not be able to hold those laws unconstitutional, under your theory.

Mr. OLIVER. They would not be able to; no, sir.

The CHAIRMAN. And that would be the most dangerous thing for minorities in this country that has ever happened in the history of the country.

Mr. OLIVER. Senator, if you will allow me to express a little further my opinion on that, I think the history of the country in every great national crisis shows that the Supreme Court acts just as hysterically as the people. During the war the Supreme Court certainly did not protect citizens. There were a lot of good people in jail.

The CHAIRMAN. Certainly; and if it had not been for the courts and for the Constitution of the United States, you would have had every Non-Partisan League member in the Northwest in the penitentiary or in jail. As a matter of fact, the Constitution of the United States was drafted by people who had been driven out of Europe and had been persecuted by majorities, and they insisted, when the Constitution was written, that there should be these provisions to protect minorities in this country.

Mr. OLIVER. Not when the Constitution was first written.

The CHAIRMAN. Yes; when the Constitution was written; and it would not have been adopted if it had not been known that these minority groups would have the protection afforded by the so-called Bill of Rights—the first 10 amendments.

I am just amazed when I hear people like yourself, liberals, who say that they want to see the Supreme Court of the United States unable to declare acts of Congress unconstitutional.

Mr. OLIVER. It may be very much out of place to say so, and if so, I want to apologize in advance, but your amazement is nothing as compared with our amazement at your position.

The CHAIRMAN. That is probably true, but that is because of the fact that I think that I know something about the Constitution, and I think I know something about this subject. I do not permit others to do my thinking.

Mr. OLIVER. No one would ever accuse you of that.

The CHAIRMAN. I am not a "yes" man for some people just because of the fact that I happen to agree with them sometimes. But let me say to you that the laboring men in this country would be the men who would suffer the most if the Supreme Court of the United States were not able to declare acts of Congress unconstitutional.

Mr. OLIVER. My feeling is that if a certain time elapses between the choice of the different governmental agencies, that in themselves they constitute a sufficient check on hysteria, and if the Supreme Court lags, as it always does, even a very few years, behind the election——

The CHAIRMAN. You think that would be a good thing?

Mr. OLIVER. It would be less susceptible of hysteria; and in times of great national stress we always get hysterical.

I have nothing further to add, Mr. Chairman. I thank you.

(The witness withdrew from the committee table.)

The CHAIRMAN. Do you want to make a statement, Mr. Brooks?

Mr. BROOKS. Very briefly, Senator.

STATEMENT OF JAMES EMORY BROOKS, CIVIL ENGINEER, GLEN RIDGE, N. J.

Mr. BROOKS. I had considerable to say, Mr. Chairman, but I will omit everything except one statement that I would like to make about an amendment, because I feel that it is part of the proposition before you. The amendment became legally dead about 10 years ago, and no one signed the death certificate to permit of its decent burial. I know it is not before you, but it has been brought up in connection with this——

The CHAIRMAN. I have not time to listen to a long statement. I am trying to be patient with you people.

Mr. BROOKS. I know you are.

May I speak a word to the Senator who asked about work in houses?

The CHAIRMAN. You can, but he is not here now.

Mr. BROOKS. Perhaps I had better write him a letter.

The CHAIRMAN. Probably you had better write one for the record. I want to be patient and courteous.

Mr. BROOKS. You have always been so.

The CHAIRMAN. I want to close these hearings, and then I am going to appoint a subcommittee consisting of Senator Johnson, Senator Barkley, and Senator White, and they will take all these suggestions and work them over and try to bring out the best bill possible.

Mr. BROOKS. My particular reason for stating this is my respect for the Supreme Court.

The CHAIRMAN. We do not want to go into a discussion of your opinion about the Supreme Court or the Constitution at this time. We have heard some very learned discussions from some learned gentlemen a moment ago. If you will send us your statement we will be glad to have it; and if there is anyone else here who wants to file a statement with the committee you may do so.

(Whereupon, at 2 o'clock p. m., the hearings were closed.)

NATIONAL CHILD LABOR COMMITTEE,
New York City, May 21, 1937.

Hon. BURTON K. WHEELER,
Chairman, Interstate Commerce Committee,
United States Senate, Washington, D. C.

DEAR SENATOR WHEELER: As promised at the hearing before the Interstate Commerce Committee on Tuesday, I am sending you herewith a comparative analysis of State laws which will show discrepancies and weaknesses such as argue strongly for a uniform Federal standard.

Very truly yours,

COURTENAY DINWIDDIE,
General Secretary.

GENERAL SUMMARY STATE CHILD LABOR LEGISLATION (AS OF MAY 15, 1937)

I. MINIMUM AGE FOR EMPLOYMENT

There are all sorts of special provisions and exemptions which make classification difficult, but in general the minimum age for work during school hours is as follows:

Nine States have a 16-year age limit, but one applies only to factory work: Montana (factories only), Ohio, Rhode Island, Connecticut, New York, Pennsylvania, Utah, Wisconsin, North Carolina, July 1, 1937.

Four States have a 15-year age limit, but two of these have exemptions permitting work at an earlier age: California,[1] Maine, Michigan, Texas[1] (no minimum in stores).

Thirty-five State and District of Columbia have a 14-year age limit, but eight of these have exemptions permitting work at an earlier age: Alabama, Arizona, Arkansas, Colorado, Delaware,[1] District of Columbia, Florida,[1] Georgia,[1] Idaho, Illinois, Indiana, Iowa,[1] Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi,[1] Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma,[1] Oregon, South Carolina,[1] South Dakota,[1] Tennessee, Vermont, Virginia, Washington, West Virginia.

One State has no general age minimum and has exemptions in its compulsory attendance laws that permit children under 14 to leave school for work: Wyoming.

II. MAXIMUM WORKING HOURS FOR CHILDREN UNDER 16

NOTE.—In 11 States (see table I) most occupations are forbidden under 16 years during school hours. The hour regulations would apply to Saturday and vacation work. In some cases hour regulations go up to 18 years.

Six States have an 8-hour day and 44-hour week. In none of these, however, is the law all-inclusive: Mississippi, New Mexico, New York, Pennsylvania, Utah, Virginia.

Three States have an 8-hour day and 40-hour week: Ohio, North Carolina, Rhode Island.

Twenty-three States and District of Columbia have an 8-hour day and 48-hour week for most occupations: Alabama, Arizona, Arkansas, California, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Jersey, North Dakota, Oklahoma, Oregon, Tennessee, Washington, West Virginia, Wisconsin, Wyoming.

Nine States have an 8-hour day and 48-hour week but it does not include many occupations (such as work in stores), there are serious exemptions or the provision does not apply to 16 years: Colorado, Connecticut, Delaware, Iowa, Maine (8-hour day but 54-hour week, or longer, in some occupations permitted), Maryland, Montana, Texas, Vermont.

Seven States specify a longer working period, 8 to 11 hours a day and 51 to 60 hours a week being permitted: Florida, Georgia, Idaho, Michigan, New Hampshire, North Carolina, South Dakota.

III. NIGHT WORK FOR CHILDREN UNDER 16

NOTE.—In 11 States (see table 1) most occupations are forbidden under 16 years during school hours. The hour regulations would apply to Saturday and vacation work. In some cases hour regulations go up to 18 years.

Sixteen States forbid work after 6 p. m., but seven of these permit serious exemptions: Connecticut, Iowa,[1] Kansas, Kentucky, Maine,[1] Massachusetts, Michigan,[1] New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, Utah, Virginia,[1] Wisconsin.

Twenty-two States and District of Columbia forbid work after 7 p. m., but six of these permit serious exemptions: Alabama, Arizona, Arkansas, Delaware,[1] District of Columbia, Georgia,[1] Illinois, Indiana, Louisiana,[1] Maryland,[1] Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, North Dakota, Pennsylvania,[1] Tennessee, Vermont,[1] Washington, West Virginia, Wyoming.

[1] Exemptions.

Ten States permit work until 8 p. m. or later, or have no regulation: California (10 p. m.), Colorado (8 p. m.), Florida (8 p. m.), Idaho, Montana, Nebraska (8 p. m.), Nevada (no regulation), South Carolina (8 p. m.), South Dakota (no regulation), Texas (10 p. m. under 15).

IV. EMPLOYMENT OF CHILDREN IN DANGEROUS OCCUPATIONS

In 11 States there is practically no prohibition of dangerous occupations for children under 16 years.

In 32 States there is practically none for minors 16 and 17 years of age.

In many others, such protection as exists is seriously inadequate, and hardly any State can be said to offer sufficiently comprehensive protection to exclude children and young people from all industrial hazards.

Eleven States with practically no prohibition of dangerous occupations for children under 16 years: Idaho, Kansas, Louisiana, Maine, Mississippi, Nebraska, New Hampshire, South Carolina, South Dakota, Texas (employment under 15 years not permitted in factories, etc.), West Virginia.

Thirty-one States with practically no prohibition of dangerous occupations for minors 16 and 17 years of age: Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, Wyoming.

V. HEALTH CERTIFICATES FOR WORK PERMITS

Twenty-seven States and District of Columbia require a physician's examination and certificate of physical fitness before a child can go to work: Alabama, Arizona, California, Connecticut, Delaware, District of Columbia, Georgia (by ruling), Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas (15 years only), Vermont, Virginia, West Virginia.

Nine States leave such an examination optional with the issuing officer: Florida, Maine, Michigan, Nebraska, New Mexico, Oklahoma, Oregon, Wisconsin (Milwaukee), Utah (mandatory).

Twelve States make no provision for physical examinations: Arkansas, Colorado, Idaho, Kansas, Mississippi, Montana, Nevada, North Dakota, South Carolina, South Dakota, Washington, Wyoming.

NEW YORK STATE CATHOLIC WELFARE COMMITTEE,
Albany, N. Y., May 20, 1937.

SENATE COMMITTEE ON INTERSTATE COMMERCE,
Washington, D. C.

(Attention of Hon. Burton K. Wheeler.)

GENTLEMEN: Our committee, comprising representation of the seven Catholic dioceses in and embracing the entire State of New York, wishes to go on record as favoring the so-called Wheeler-Johnson child labor bill now before your committee for consideration.

We have examined this particular bill under no. S. 2226, and like particularly the plan of having two methods of approaching the problem, through (*a*) the Federal Government and (*b*) the States and the Federal Government; so, if the Supreme Court should not sustain section 4 of the present bill—which is alike to the old child labor bill of 1916—there is left for use, in answering the problem, one of State and Federal control. After considering the moral, social, legal, and economic phases of the problem, we feel certain that the Wheeler-Johnson bill adequately and effectively attains the result that is desired by all humane agencies, namely, to end the present exploitation of children in industry.

As some members of your committee know, we have consistently opposed the Federal child-labor amendment that has been before the various States for the past 13 years because it was a national youth-control proposal and not a child-labor measure. On the other hand, we have always been opposed to the exploitation of children for profit and because we believe the enactment of the Wheeler-Johnson bill will most likely eliminate that evil we strongly favor and heartily endorse it.

Enclosed is a copy of my statement made before the New York Legislature on February 22, 1937, on the youth-control amendment, which I would ask be made a part of this communication.

Yours respectfully,

EDMUND F. GIBBONS, *Chairman.*

GLEN RIDGE, N. J., *May 24, 1937.*

To the SENATE COMMITTEE ON INTERSTATE COMMERCE.

GENTLEMEN: As I was unable to be heard orally before the committee at its hearing on child-labor legislation because of lack of time, I am following the suggestion of your chairman, Senator Wheeler, in filing the accompanying brief memorandum on the subject.

Yours respectfully,

JAMES EMERY BROOKS, *Civil Engineer.*

P. S.—I am not representing any organization, nor receiving money from any source for my work in the interests of child welfare.

I am opposed to Federal control of youth and Federal control of child labor because—

1. Federal control violates the principle of home rule. Home rule by the family or State should not be superseded by Federal control unless home rule has failed utterly. In the matter of child labor, home rule has not failed.

Home rule, in the form of State laws, backed by strong public opinion, has made such remarkable progress in recent years in eliminating harmful child labor that there is practically no child labor left in any part of the United States.

2. The widespread belief that many little children are now employed in industry in some States, working long hours in unhealthful surroundings, is no longer based on fact. It is just a superstition fed by false and misleading propaganda. Superstition is the most difficult form of relief to combat.

3. Of the various bills under consideration, I would prefer the Wheeler-Johnson bill, S. 2226, with proper amendments, to all the others because it interferes less with home rule and is less likely to be rejected by the Supreme Court.

I want to disagree with Mr. Dinwiddie when he stated that the amendment was defeated this year in the New York State Legislature by the influence of the Catholic Church.

The Methodist Church, the Lutheran Church, and the Episcopal Church were also represented in opposition to the amendment. Many of us who fought the amendment are not Roman Catholics.

The vote was 102 to 42. The speaker of the Assembly, opposed to the amendment, did not vote. I have a letter from an assemblyman, who was absent, saying that he was opposed. He went to a funeral with the understanding that the vote would not be taken while he was away.

The amendment was defeated on its demerits. The members of the New York Assembly are not marionettes.

I do not agree with Miss Lenroot and Miss Abbott in their predictions as to how State and Federal child-labor laws will work together. The experience with the two Federal laws covered too short a period to make a reliable basis for judging the future. No doubt the State labor departments would cooperate at first, but I believe the State appropriations would be gradually cut down until the administration and enforcement of the law would be left to the Federal Government.

It must be borne in mind that the child-labor bills now before the committee differ from the original child-labor bills in the matter of ages. In the earlier bills the limit was 14 years, with 16 years for hazardous employment, while in the present bills the limit is 16 years, with 18 years for the hazardous employment.

It has been stated many times, during the years the youth-control amendment has been under consideration, that Congress would merely pass a minimum standard permitting the individual States to maintain a higher age limit, should they so desire. As usually happens, Government bureaus are greedy for all the power they can get, and the bills now under consideration have jacked up the age limit by 2 years, which I believe to be a serious mistake. With the lower age limit there would be much more reason for the States with

a limit higher than that of the Federal to maintain their own children's bureaus, and cooperate with the Federal bureau, but with a higher Federal limit the States would be inclined to lie down and "let George do it."

MINIMUM STANDARDS

The proponents of the Federal youth-control amendment have declared repeatedly that Congress could be trusted never to use all of the vast powers granted to it by the amendment, should it be ratified. We were assured that Congress would pass laws with minimum standards, applicable to all the States, and then the individual States could place higher standards if they so desired.

In his message to the New York State Legislature of 1937, speaking of the amendment, Governor Lehman said in part:

"Practically speaking, Congress would set up minimum standards regulating the employment of children in certain hazardous and other occupations. All this has been done in New York State for many years. It is very unlikely that Federal standards would be as strict as those we now have in our State."

The bills under consideration indicate that the reformers want the full pound of flesh, not a minimum standard.

There are many boys, and girls, too, 14 years old, who are no longer fit, either mentally or temperamentally, for further schooling. To force them to continue in school for another 2 years is bad for them and bad for the school, too.

Remedial legislation should be beneficial—not harmful. To fix a rigid 16-year limit is blind, heartless bureaucracy. It does not take into consideration the nature of the work, the number of hours of employment, nor the fact that the employment might be during vacation time. If it can be shown that a 15-year-old boy can be gainfully employed in an occupation which is in no way harmful to him, and which does not interfere with his schooling, his right to benefit by such employment should not be denied; he should be granted a permit by a proper authority.

On the Saturday morning in July 1881 that President Garfield was shot by an assassin, in the city of Washington (there being no school Saturdays) I was employed in a grocery store in Philadelphia. There was no Miss Abbott, Miss Lenroot, nor Miss Perkins, to interfere. The work was in no way harmful, and was a valuable experience. I was not quite 12 years old, and I am still here to tell the tale, and to speak for the boys and girls whose real interests are being overlooked. Reformers often stand up so straight that they fall over backwards.

The hearings on Tuesday and Thursday last brought out the fact that there is very little child labor remaining today in any part of this country of persons under 14 years of age. The great concern appears to be centered on the labor of persons between 14 and 16 years of age. It is claimed that States with a rigid 15-year limit are subject to unfair competition by the labor of persons in other States where some labor between 14 and 16 years is permitted.

I believe this is a man of straw, a scarecrow, gotten up as a talking point for those in favor of Federal control. It is not the age of the employees that affects the cost of manufactured goods, it is the amount of production per dollar of wages paid. At the same rate of pay a manufacturer would prefer 16-year-old to 14-year-old workers. Even if the 14-year-old worker were paid less, the difference would need to be material to affect the cost of the product, because the work of a 14-year-old would be less efficient than that of an older person. Have any manufacturers complained about this competition, and given details—or is it all imagination?

During the hearings on child-labor legislation before the committee, the proposed control-of-youth amendment to the Federal Constitution was referred to many times, and concerning the same I beg leave to submit the following:

First. I believe that this amendment became legally dead when the thirteenth State legislature rejected it, and these rejections were certified to by the Secretary of State at Washington, more than 10 years ago. By the end of the year 1925 the amendment had been assented to by four States, and had been affirmatively rejected by 21 States.

If this amendment had been submitted for ratification by State conventions, and 13 State conventions had met, rejected the amendment, and adjourned, and their action certified to the Secretary of State at Washington, that would have been the end of the amendment. It would be ridiculous to suppose that new conventions could be called in these States, years later, to act again on the amendment. The same rule should be applied to legislatures. A rejection that does not reject is not a rejection at all.

Second. If, like a cat, this amendment has more than one life, it has expired a second time—this time by limitation.

If 36 States ratify it now, there will be an appeal to the Supreme Court to settle this question. Should the Supreme Court declare the amendment dead by limitation, the sincere but misguided women and the labor element, instead of recognizing that the Supreme Court was doing a solemn duty, would accuse the Court of forcing children to hard labor. On the other hand, should the Court sustain the amendment, it would be establishing a precedent for amendments to the Constitution to drag along for 13 or more years, and still be ratified. This would be very unfortunate. Seven years should be the time limit.

AMERICAN COALITION,
Washington, D. C., May 19, 1937.

Hon. BURTON K. WHEELER,
Chairman, Committee on Interstate Commerce,
United States Senate, Washington, D. C.

DEAR SENATOR WHEELER: I submit herewith, on behalf of the American Coalition, a statement relating to proposed legislation at present pending before your committee.

The American Coalition is emphatically opposed to the employment of child labor in industry, but it holds that the regulation of child labor is a matter purely within the scope of the State and not the Federal Government.

Bureaucracy is diametrically opposed to all that was conceived originally in the development of our democracy and has a tendency to tear down the very thing for which our forefathers fought.

There is no better example of current tendencies in our country today than the placing in bureaus in the National Capital control of those very things which it was intended should remain with the States, and there is no better example of encroachment upon the sovereign powers of the people than the broad powers sought by the Children's Bureau of the Department of Labor. Conceivably it was founded with good intent and certainly it was the thought of Congress that it was a patriotic beneficial thing to do, but it was considered and looked upon at the time, to use the words of Senator Borah, as "an insignificant little Bureau", that it would never get beyond the $27,000 to be annually appropriated for it, simply and exclusively to collect and disseminate statistics for the welfare of the children. But startling as it may seem, by 1921 that annual appropriation for the administration of the Bureau grew to be 10 times as great, $270,000, for just "an insignificant little Bureau", and under the Social Security Act this Bureau has been given an appropriation of $6,469,000 for this year.

Every Senator and every Congressman is sent to Washington as a representative of the people of his State, and I know of no better way to illustrate the real position of a Senator than to say that he is an ambassador from the State which elects him. That being so, and it is incontrovertible, it has always been an anomaly to me that in many instances, shortly after becoming a Member of the Senate or the House of Representatives, they should yield to the persuasion of bureaucratic power seekers to take away the sovereign rights of the people of their respective States and vest it in Federal bureaus. How much better it would be to appropriate a limited sum for the purpose of sending intelligent, reasonable representatives of the Federal Government to the States to work with those having to do with child-labor control, to point out to them the sociological benefit to be derived from such a course, to do all within their power to encourage legislation by the Federal States in that direction and to urge enforcement of existing laws. I appreciate fully that this is taking a certain liberty, in view of the admitted ability of the great majority of the Senators and Representatives, and I do so with utmost respect, hoping that even I might offer a thought which might result in the charting of a little different course in trying to improve society.

In 1916 the Children's Bureau, by its lobbying, got through a child-labor bill which was declared unconstitutional by the Supreme Court.

In 1919 a second law was passed for the same purpose and that was declared unconstitutional by the Supreme Court.

If you care to have any confirmation of my statements to the effect that it was the Children's Bureau back of this entire movement I refer you to the records of the committee hearings relating to those bills.

Did that in any way discourage the Children's Bureau or those who would have the life of every child regulated from Washington? Not at all. In 1924 there was brought forward and presented to the Congress the child-labor amendment, so-called, but in fact an amendment to completely control the life of a child until 18 years of age. It reads as follows:

"SECTION 1. The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

"SEC. 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress."

It seems only necessary to refer to the outrages and atrocities committed in the name of the law under the eighteenth amendment to give a slight idea of what could be done to the youth of this Nation if by bureaucratic control the millions and millions of youths under 18 years of age, children of citizens and taxpayers in the several States, are placed under a Federal bureau given "power to limit, regulate, and prohibit the labor of persons under 18 years of age." Remember, and this is important, that when such laws go on the statute books, or such amendments are passed, it means, not that Congress will, in its judgment and wisdom, carry out its laws, but that power shall be vested in a Cabinet officer, who in turn vests it in bureaucratic chiefs, who by "rules and regulations" extend and elaborate upon that power. That power, under such an amendment or under the bills now before the Interstate Commerce Committee of the Senate for the control of youth, is just another step in the direction of national bureaucratic control and, necessarily, in the deprivation of the powers theretofore vested in the people of the several States. And this directly in face of the fact that every State but Wyoming has child-labor laws, constantly being strengthened, and even that one State has a law relating to hazardous occupations as to child labor.

Let us for a moment take a broad view of just how far the present tendency to Federal control of the people goes. In 1921 under the influence of the Children's Bureau, there was passed a so-called Sheppard-Towner bill, known as the Maternity Act, and though it was short lived because its fallacies, its vicissitudes, and its unlimited scope, so appalled the Senate that it was wiped from the statute books in 1929. The Children's Bureau today is clothed with the same power and authority under the Social Security Act.

If this Bureau becomes vested with the power proposed to be given by the pending child-labor amendment or if either of the prlesent proposed bills, S. 2226, introduced by Senators Wheeler and Johnson of Colorado, or S. 2345, introduced by Senator Barkley, should pass, it would mean that a child from the day of its conception, through the authority vested in the Children's Bureau, would come under its control and direction through the imposition of "rules and regulations" upon mothers by the Children's Bureau. Then, after the child is born, for 16 or 18 years, under the amendment or under the proposed bills, the child continues to live by the "rules and regulations" of the Children's Bureau; and when the child has reached the age of 18 years he is tagged with a number for the rest of his life, under the Social Security Act. That is how far we have gone from the free government or the blessings of liberty supposed to be preserved to the people by a "firm adherence, justice, moderation, temperance, frugality, and by virtue, and by frequent recurrences to fundamental principles", for which language I am indebted in a large part to the framers of the Virginia Bill of Rights of 1776.

To depart from serious trends for a moment, it is suggested that the cycle of ubiquitous power could be readily completed by passing a birth-control bill to be administered by the same authority, so that storks could only operate by virtue of a license to be issued by the Children's Bureau.

Respectfully submitted.

H. RALPH BURTON,
Chairman, Special Committee on Child Labor Legislation.

×

Date Due			
May 24			
NOV 17 1943	Dec 1		
NOV 2 1944	11/9		
APR 26 1947	5/10		
DEC 6 1947	12/20		

MSH 02226

NEH JUL 01 1994

APR 26 1947 Barbara Gutman
5/10 Hewitt Hall

DEC 6 1947
12/20 50 Morningside Dr
R. Lasnick apt 32
NY 25

COLUMBIA UNIVERSITY LIBRARIES
0041392892

JUN 16 1938

END OF
TITLE